



**Practice Direction No. 1 of 2011**  
**Withdrawal of Counsel in Criminal Proceedings**

1. This Direction applies to counsel appearing in all courts in Fiji including the Court of Appeal and the Supreme Court. It repeats much of the same sentiments as in the Practice Direction published by Nimmo CJ in 1972 [see *CPC annotated by Marie Chan 2008 at p 400*].
2. Occasionally counsel is obliged to withdraw from a case. This may be because instructions have been withdrawn, counsel no longer feels able to represent the client satisfactorily, or considers there to be a conflict of interest, or conflict with his or her duty to the court in continuing to appear for the client, or that counsel is physically incapacitated from appearing. This is not an exhaustive list of instances, for there are likely to be other and proper reasons for seeking withdrawal.
3. Where counsel needs to withdraw, it is counsel's duty as a matter of courtesy and good practice to appear on the next listed mention or hearing date and seek leave to withdraw. But application for leave to withdraw need not await the next court date. Counsel may apply before such date by motion and affidavit. The court will then consider whether to grant leave. This may involve a consideration as to whether or not counsel may be able to continue to serve his or her client's best interests if he or she were ordered to continue and if leave were declined: *Ram Sharan v. Kanyawati* [1969] 15 Fiji LR 220 at p 223; *Lockhart-Smith v United Republic* [1965] E.A. 211 at p 265.
4. However this Direction is no more than a restatement of earlier practice, with which newer members of an increasing Bar may be unfamiliar. It is framed to avoid the situation where counsel, previously briefed and appearing in a matter, fails to appear on the next occasion thus abandoning his or her client. Procedurally, if there is to be a withdrawal by counsel, it is necessary for that counsel to appear before the court and obtain leave for his or her withdrawal from the case.
5. At the interlocutory stages leave may more readily be obtained. At the commencement of a trial or during a trial, leave may not so easily be granted.



6. In summary the court is unlikely to permit withdrawal:

- (a) where counsel would be in breach of his or her duty to the client
  - (b) where, though for valid reasons, the application to withdraw is made at the last minute, which would cause postponement of trial, wasted witness costs whether attending from overseas or locally, or where by the withdrawal a waste of court time and public funds is likely to be occasioned
  - (c) to enable counsel to undertake an alternative commitment whether of a public or private nature
  - (d) where counsel's fee in whole or in part has not been paid.
7. If the court refuses to permit withdrawal and counsel nonetheless withdraws, a report may be lodged with the Chief Registrar for consideration of future action under the Legal Practitioners Decree. With a sense of service and duty to the client and to the Court uppermost, no practitioner, it is to be anticipated, would allow such a situation to arise.
8. In the case of counsel being hospitalized, another counsel may make the application upon his or her behalf. In certain instances a court may insist on the production of a medical certificate as in Form 62 of the CPC.

6<sup>th</sup> April 2011



A.H.C.T. Gates  
Chief Justice  
Suva, Fiji