

CIVIL COURT OF THE CITY OF NEW YORK

Civil Court Directive

Subject: Order to Show Cause
Change or Withdrawal of Attorney,
CPLR § 321

Class: DRP-134
Category: GP-60.1/LT-40
Eff. Date: February 4, 1993

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BACKGROUND:

For many years the clerks have been faced with a severe problem when an individual (non-corporate) litigant wishes to proceed in person, use court forms, etc., and there is a Notice of Appearance from an attorney, or papers filed on his/her behalf by an attorney. In these instances, the litigants tell the clerks that the attorney has been dismissed, refuses to quit, or describes a similar concept indicating that the attorney no longer is involved in a professional capacity.

The clerks are placed in the position of allowing or denying the use of Civil Court forms, information, etc., based upon their individual judgment. Needless to say, this often engenders arguments and dissatisfactions all around.

In order to avoid this problem, clerks often request an affidavit from the litigant stating that s/he has no attorney, that the attorney has been fired, refuses to quit, etc. This type of affidavit does not comply with the requirements of CPLR § 321.

DIRECTIVE OF THE ADMINISTRATIVE JUDGE:

In any action in Civil Court in which an individual (non-corporate) litigant is, or has been represented by an attorney, clerks are directed to consider that this individual (non-corporate) litigant is still represented by an attorney **unless** there is:

- a) a "Withdrawal of Attorney" form on file, **or**
- b) a court order allowing the party to proceed without an attorney (pro se).

The Chief Clerk is directed to formulate procedures and forms to implement this Directive, and to advise all concerned staff as appropriate.

Dated: February 4, 1993

Jacqueline W. Silbermann
Administrative Judge

NOTE: As a reminder, with the exception of Small Claims litigation, in accordance with CPLR § 321, all **corporate** litigants **must** be represented by counsel, or be in default.

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CLERKS PROCEDURES:

Following the Directive of the Administrative Judge, clerks are advised:

In any action in Civil Court in which an individual (non-corporate) litigant is (or has been) represented by an attorney, the clerk may not allow in-person (pro se) participation nor provide in-person forms unless **either** of the two following items are presented:

1. A Withdrawal of Attorney form, signed by the retiring attorney and signed and acknowledged by the party, with proof of service upon all other parties to the action,

or

2. A court order, signed by a judge, allowing the party to appear in person (pro se).

In order for an individual to request the Court Order referred to in “2.” above, clerks are given the limited authorization to provide special affidavit and order to show cause forms.

The affidavit shall attest:

- that the party was previously represented, and by whom;
- that the party has discharged (fired) the attorney or the attorney has voluntarily withdrawn from representing the litigant but (for some reason) has not served/filed the CPLR § 321 Withdrawal of Attorney form;
- that the party has made a diligent effort to find the attorney to secure the Withdrawal of Attorney form but has been unable to do so, and indicate the reason(s) for such inability to obtain the Withdrawal of Attorney form.

Form **CIV-GP-13A**, Affidavit in Support of an Order to Show Cause to Permit a Represented Party to Appear in Person (Pro Se), has been prepared and provided for this purpose.

This affidavit is to accompany an order to show cause (**CIV-GP-43A**) requesting the limited relief of permitting the party to appear in person. The order to show cause is to contain provisions for service of a copy of a complete set of the motion papers (the order to show cause, affidavit and any exhibits) on the attorney for the movant, and upon all other parties to the litigation, in such manner as the Court may direct.

The Clerk is directed to neither assist nor provide any forms, other than the blank special affidavit form and order to show cause form indicated above, to any individual who is (or has been) represented by an attorney, unless either a Withdrawal of Attorney form has been received or a court order (as provided above) has been signed by a judge.

The Clerk must, of course, accept any papers for filing, processing, etc., which are brought in by any party, whether or not the party is (or has been) represented by counsel.

There shall be no change in the requirement, in accordance with CPLR § 321, that all corporate litigants must be represented by counsel or be in default (except with regard to Small Claims litigation).

Dated: February 4, 1993

Jack Baer
Chief Clerk