

**Olivares v City of New York**

2022 NY Slip Op 33716(U)

October 28, 2022

Supreme Court, New York County

Docket Number: Index No. 155667/2021

Judge: Leslie A. Stroth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LESLIE A. STROTH** PART **52**

*Justice*

-----X

INDEX NO. 155667/2021

HAILYN OLIVARES,

MOTION DATE 10/26/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, DANIEL HILL, EUGENE  
MCCARTHY, JESSE TURNER, SCOTT SHANLEY,  
GERALD WILLIAMS

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22

ATTORNEY -

were read on this motion to/for DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

Corporation Counsel moves for an order pursuant to CPLR 321 to be relieved as counsel for individual defendant Daniel Hill, a New York City employee, and staying all discovery for a period of sixty (60) days to allow Mr. Hill to retain new counsel. The underlying matter involves purported civil rights violations arising out of plaintiff's denial of employment benefits.

Pursuant to General Municipal Law (GML) § 50-k (4):

...the city shall provide for the defense of an employee of any agency in any civil action or proceeding in any state or federal court...arising out of any alleged act or omission which the corporation counsel finds occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged act or omission occurred.

Representation by Corporation Counsel may be declined or withdrawn as a matter of discretion, which shall only be set aside if such decision is determined to be arbitrary and capricious. *See Matter of Williams v City of New York*, 64 NY2d 800, 802 (1985).

In support of her motion, attorney Jasmine Harris affirms that upon additional investigation, Corporation Counsel determined that it can no longer represent Mr. Hill pursuant to GML § 50-k (4). Attorney Harris also affirms that she contacted Mr. Hill by mail notifying him that Corporation Counsel is withdrawing as his attorney, indicating that he should promptly seek new counsel, and informing him to contact union counsel. Attorney Harris' affirmation does not contain details as to Corporation Counsel's investigation to avoid prejudicing Mr. Hill's rights. No opposition has been filed by Mr. Hill or opposing counsel.

The matter was heard on October 26, 2022, at which Attorney Harris and counsel for plaintiff appeared. The Court directed Attorney Harris to provide a confidential supplemental affirmation describing her investigations for *in camera* review. Plaintiff's counsel did not oppose the submission of such affirmation. Upon receipt of the confidential affirmation in further support of the order to show cause, the Court now finds that Corporation Counsel's decision to withdraw as counsel for Mr. Hill is neither arbitrary nor capricious.

As the additional information provided in the supplemental affirmation would be prejudicial to plaintiff, the Court declines to re-iterate the particulars in the within motion. Moreover, the Court notes that because this case is in its early stages, discovery is not complete, and no substantive motion practice has yet ensued, the prejudice resulting from allowing Corporation Counsel to withdraw is minimal.

Therefore, it is

ORDERED that the motion of Corporation Counsel to be relieved as attorney for Daniel Hill is granted upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former client at their last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 60 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event plaintiffs intends instead to represent themselves, they shall notify the Clerk of the Part of this decision in writing within said 60-day period; and it is further

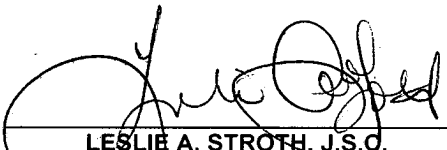
ORDERED that any new attorney retained by plaintiffs shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within 70 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 70 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)).

The foregoing constitutes the decision and order of the Court.

|                           |  |  |   |                                    |
|---------------------------|--|--|---|------------------------------------|
| <u>10/28/2022</u><br>DATE | <br>LESLIE A. STROTH, J.S.O. |  |   |                                    |
| CHECK ONE:                | <input type="checkbox"/> CASE DISPOSED   | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER     |
| APPLICATION:              | <input checked="" type="checkbox"/> GRANTED  | <input type="checkbox"/> DENIED            | <input type="checkbox"/> GRANTED IN PART                  | <input type="checkbox"/> OTHER     |
| CHECK IF APPROPRIATE:     | <input type="checkbox"/> SETTLE ORDER  | <input type="checkbox"/> SUBMIT ORDER      | <input type="checkbox"/> FIDUCIARY APPOINTMENT            | <input type="checkbox"/> REFERENCE |
|                           | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN  |  |   |                                    |