

**Espinal v City of New York**

2023 NY Slip Op 30014(U)

January 3, 2023

Supreme Court, New York County

Docket Number: Index No. 150090/2010

Judge: Leslie A. Stroth

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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

ADRIAN LORA ESPINAL,
Plaintiff,

INDEX NO. 150090/2010
MOTION DATE 12/21/2022
MOTION SEQ. NO. 002

- v -

CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER JOHN DOE #1, POLICE
OFFICER JOHN DOE #2, POLICE OFFICER JOHN DOE
#3, POLICE OFFICER FLANNY (TAX REGISTER #936602),
POLICE OFFICER ANTIONE DUCRET (SHIELD #11016),
POLICE OFFICER EFRAIM LUGO (SHIELD #04345),
POLICE OFFICER JOHN MEJIA (SHIELD #08327), POLICE
OFFICER GALARZA (SHIELD #18301), POLICE OFFICER
FEDERICO (TAX REGISTER #944261), POLICE OFFICER
SALAZAR (TAX REGISTER #921463), POLICE OFFICER
JOHN DOE #4

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38
were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

Plaintiff's counsel, Law Offices of Marc E. Bengualid, PLLC, moves for an order pursuant
to CPLR 321 to be relieved as counsel for plaintiff based on an irrevocable breakdown between
plaintiff and counsel, and staying all proceedings for a period of 30 days to allow plaintiff to retain
new counsel. The underlying matter involves claims by plaintiff against defendants sounding in
assault, battery, and excessive force in connection with plaintiff's arrest on March 17, 2009. In
support of his motion, attorney Etan C. Harris affirms that due to the irrevocable breakdown
between attorney and client in this matter, Mr. Harris and his firm cannot continue to prosecute
this matter.

An attorney may withdraw as counsel of record upon a showing of good and sufficient
cause for withdrawal and where reasonable notice has been provided to plaintiffs. See Genn v

*Ratnathicam*, 187 AD3d 539 (1st Dept 2020). Deterioration of the attorney-client relationship is a commonly recognized ground for a withdrawal motion. Good and sufficient cause exists where there are "...irreconcilable differences between the attorney and the client with respect to the proper course to be pursued in litigation." *Winters v Rise Steel Erection Corp.*, 231 AD2d 626 (2d Dept 1996).

The matter was conferenced by the Court on December 21, 2022, during which plaintiff's and defendants' counsel appeared. Defendants' counsel represented to the Court, and plaintiff's counsel agreed, that the matter has been set for trial for the first time on January 7, 2022. Defendants' counsel takes no position as to the relief requested in the instant motion. However, defendants' counsel partially opposes the motion only to the extent that, due to the age of the case – which is over 12 years old – the City requests that in the event plaintiff fails to obtain new counsel by a date certain, the matter proceed to trial with plaintiff representing himself *pro se*, and, if plaintiff further delays this action for any unreasonable purpose, that the action be dismissed. In his partial opposition to the motion, defendants' counsel outlines plaintiff's allegedly dilatory tactics in prosecuting the case.

Upon request of the Court, plaintiff's counsel submitted a supplemental affirmation for an *in-camera* inspection detailing the reasons for the instant motion. Following receipt of the confidential affirmation in further support of the order to show cause, the Court now finds that Law Offices of Marc E. Bengualid, PLLC demonstrates good and sufficient cause to be relieved as counsel. As the additional information provided in the supplemental affirmation may be prejudicial to plaintiff, the Court declines to detail the particulars in the within decision. The Court stays all proceedings for a period of 30 days to allow plaintiff to retain new counsel.

Moreover, given the extreme delay in prosecuting this case, the Court will schedule an appearance in the judicial mediation part (Part 40) on February 6, 2023, at the end of the stay period, at which either plaintiff or plaintiff's counsel must appear. Failure to appear may result in dismissal of the case. If the matter does not resolve following conference with Part 40, a trial date will be scheduled.

Therefore, it is

ORDERED that the motion of Law Offices of Marc E. Bengualid, PLLC to be relieved as attorney for Adrian Lora Espinal 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 30 days from the date of the mailing of the notice and the client shall comply therewith, except that, in the event plaintiff intends instead to proceed *pro se*, they shall notify the Clerk of the Part of this decision in writing within said 30-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 100 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 40 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); and it is further

ORDERED that the parties are directed to appear for a conference in Part 40 (J-Med), Room 422, at 60 Centre Street, on February 6, 2023, at 9:30 AM. If plaintiff does not retain counsel prior to the conference date, plaintiff must appear self-represented. Failure to appear may result in dismissal.

The foregoing constitutes the decision and order of the Court.

1/3/2022  
DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE