

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILLY COLLINS,) 1:08-cv-00476-SMS
Plaintiff,)
v.) ORDER GRANTING PLAINTIFF'S
MICHAEL J. ASTRUE,) COUNSEL'S MOTION TO WITHDRAW AS
COMMISSIONER OF SOCIAL) ATTORNEY OF RECORD (DOC. 20)
SECURITY,)
Defendant.) ORDER GRANTING AN EXTENSION OF
) TIME FOR THE FILING OF
) PLAINTIFF'S BRIEF TO NO LATER
) THAN MARCH 10, 2009
)
) ORDER DIRECTING THE CLERK TO
) UPDATE THE DOCKET AND TO SERVE
) THIS ORDER ON PLAINTIFF HIMSELF
) AT THE ADDRESS SPECIFIED IN THIS
) ORDER

Plaintiff is proceeding in forma pauperis and with counsel with an action seeking judicial review of a final decision of the Commissioner of Social Security (Commissioner) denying Plaintiff's application for benefits. The matter has been referred to the Magistrate Judge for all proceedings, including the entry of final judgment, pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73(b), and Local Rule 73-301.

24 Pending before the Court is the motion of Marc V. Kalagian
25 of the law offices of Rohlfing and Kalagian, LLP, to withdraw as
26 attorney of record for Plaintiff, which was served on Defendant
27 and Plaintiff and filed on December 11, 2008. The motion included
28 a notice and motion to withdraw as attorney of record, a

1 supporting memorandum, and a declaration. The Court issued a
2 briefing order that was served on Plaintiff on December 15, 2008,
3 setting deadlines for the filing of any opposition by Plaintiff
4 and reply thereto; no opposition was filed, and Defendant has not
5 responded. The Court has reviewed all the documents submitted in
6 connection with the motion.

7 I. The Motion to Withdraw as Attorney of Record

8 Movant Marc V. Kalagian states that after undertaking
9 representation of Plaintiff in February 2008, and reviewing the
10 administrative record, he informed Plaintiff in August 2008 in
11 writing of his opinion that he could not pursue the case on
12 Plaintiff's behalf, and he informed Plaintiff that if Plaintiff
13 disagreed with counsel's opinion, Plaintiff could sign a
14 substitution of attorneys and seek other counsel. As of the time
15 the motion was filed, Plaintiff had neither advised Kalagian of
16 the retention of alternate counsel or authorized counsel to
17 dismiss the action. (Decl. of Kalagian, ¶¶ 2-4.)

18 On December 11, 2008, counsel mailed a copy of the motion to
19 Plaintiff at Plaintiff's last-known address, and he has submitted
20 to the Court documentation of Plaintiff's receipt of the motion.
21 (Decl. ¶ 6, Ex. 1.) Plaintiff's last known and current address is
22 2609 Westholme Blvd., Apt. B, Bakersfield, California 93309. The
23 Court finds that Plaintiff's address has been established within
24 the meaning of Local Rule 83-182(d). The Court further finds that
25 withdrawing counsel gave Plaintiff adequate notice of the instant
26 motion.

27 The grounds of the motion are that after diligent research
28 of the issues, counsel has formed the opinion that he cannot

1 pursue the matter on Plaintiff's behalf and that to do so could
2 subject Plaintiff and counsel to sanctions under Rule 11. (Decl.
3 of Kalagian ¶ 5.)

4 Local Rule 83-182 provides that an attorney may request
5 withdrawal if grounds exist pursuant to the Rules of Professional
6 Conduct of the State Bar of California. Cal. Rules of Prof.
7 Conduct, Rule 3-700(C) (1) (a) provides for withdrawal with the
8 permission of a tribunal if the client insists upon presenting a
9 claim or defense that is not warranted under existing law and
10 cannot be supported by good faith argument for an extension,
11 modification, or reversal of existing law. Fed. R. Civ. P.
12 11(b) (1) provides that by presenting to the Court a paper, an
13 attorney is certifying that to the best of the person's
14 knowledge, information, and belief, formed after an inquiry
15 reasonable under the circumstances, that the claims, defenses,
16 and other legal contentions therein are warranted by existing law
17 or by a nonfrivolous argument for the extension, modification, or
18 reversal of existing law or the establishment of new law. Cal.
19 Rules Prof. Conduct, Rule 3-700(C) (6) permits withdrawal if the
20 member believes in good faith in a proceeding pending before a
21 tribunal that the tribunal will find the existence of good cause
22 for withdrawal.

23 The Court finds and concludes that counsel has established
24 grounds for withdrawal. The motion to withdraw will be granted.

25 II. Extension of Time to File Plaintiff's Opening Brief

26 Local Rule 83-182(d) provides, "Leave to withdraw may be
27 granted subject to such appropriate conditions as the Court deems
28 fit." Counsel has requested that the Court grant Plaintiff time

1 to search for counsel and extend the time for filing Plaintiff's
2 opening brief. Plaintiff's opening brief was due on January 21,
3 2009; thus, it is currently overdue.

4 In order to permit Plaintiff to obtain counsel and to file
5 an opening brief, the Court will extend the deadline for its
6 filing until March 10, 2009.

7 The Court notes that upon counsel's withdrawal, Plaintiff
8 will be proceeding pro se and will be responsible for the timely
9 prosecution of the action even if Plaintiff fails to obtain new
10 counsel. A failure to comply with an order of the Court,
11 including the deadline for the filing of Plaintiff's opening
12 brief, will result in sanctions, including dismissal of this
13 action. Because Plaintiff is now proceeding pro se, the Court
14 will by separate order inform Plaintiff of requirements
15 concerning Social Security cases in this Court.

III. Disposition

Accordingly, it IS ORDERED that

18 1) The motion of Plaintiff's counsel, Marc V. Kalagian, to
19 withdraw as attorney of record IS GRANTED; and

20 2) Plaintiff's opening brief SHALL BE FILED no later than
21 March 10, 2009; and

22 3) The Clerk SHALL UPDATE THE DOCKET to reflect Plaintiff's
23 pro se status and Plaintiff's address of 2609 Westholme Blvd.,
24 Apt. B, Bakersfield, California 93309 and SHALL SERVE this order
25 upon Plaintiff at that address.

26 IT IS SO ORDERED.

27 | **Dated:** January 23, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE