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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7

8 BILLY COLLINS, ) 1:08-cv-00476-SMS  
9 )  
10 Plaintiff, ) ORDER GRANTING PLAINTIFF'S  
11 v. ) COUNSEL'S MOTION TO WITHDRAW AS  
12 ) ATTORNEY OF RECORD (DOC. 20)  
13 MICHAEL J. ASTRUE, )  
14 COMMISSIONER OF SOCIAL ) ORDER GRANTING AN EXTENSION OF  
15 SECURITY, ) TIME FOR THE FILING OF  
16 ) PLAINTIFF'S BRIEF TO NO LATER  
17 Defendant. ) THAN MARCH 10, 2009  
18 )  
19 ) ORDER DIRECTING THE CLERK TO  
20 ) UPDATE THE DOCKET AND TO SERVE  
21 ) THIS ORDER ON PLAINTIFF HIMSELF  
22 ) AT THE ADDRESS SPECIFIED IN THIS  
23 ) ORDER  
24 )

25 Plaintiff is proceeding in forma pauperis and with counsel  
26 with an action seeking judicial review of a final decision of the  
27 Commissioner of Social Security (Commissioner) denying  
28 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.

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

16 III. Disposition

17 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**