

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANDREW F. MCFADDEN, an
individual,

Plaintiff,

vs.

CITY OF EL CENTRO,

Defendant.

CASE NO. 10cv2042-WQH-WMc

ORDER

HAYES, Judge:

The matter before the Court is the Motion to be Relieved as Counsel for Plaintiff Andrew McFadden, filed by Douglas E. Geyman. (ECF No. 22).

On September 30, 2010, Plaintiff initiated this action by filing the Complaint. (ECF No. 1). On December 6, 2010, Plaintiff filed a First Amended Complaint. (ECF No. 8). On December 22, 2010, Defendant City of El Centro filed their Answer to the Amended Complaint. (ECF No. 12). An Early Neutral Evaluation Conference was held on February 1, 2011, and a Case Management Conference was held on March 29, 2011, both before Magistrate Judge William McCurine. (ECF Nos. 14, 17).

On June 29, 2011, Douglas Geyman was appointed to this case as Plaintiff's counsel via substitution agreement. (EFC Nos. 19-20). On September 28, 2011, Geyman moved to be relieved as counsel on the basis that "the relationship between [Plaintiff] McFadden and [Geyman] has completely broken down.... render[ing] it impossible for [Geyman] to provide any form of meaningful representation." (ECF No. 22-1 at 2). On October 19, 2011, Plaintiff McFadden filed a Response in Opposition to the Motion to Withdraw. (ECF No. 27).

1 An attorney may not withdraw as counsel except by leave of court. *Darby v. City of*
2 *Torrance*, 810 F. Supp. 275, 276 (C.D. Cal. 1992). "The decision to grant or deny counsel's
3 motion to withdraw is committed to the discretion of the trial court." *Irwin v. Mascott*, 2004
4 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), *citing Washington v. Sherwin Real*
5 *Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir. 1982). Among other things, courts ruling upon
6 motions to withdraw as counsel have considered,

7 (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may
8 cause to other litigants; (3) the harm withdrawal might cause to the
9 administration of justice; and (4) the degree to which withdrawal will delay the
10 resolution of the case.

11 *Irwin*, 2004 U.S. Dist. LEXIS 28264 at 4.

12 After reviewing the record and the reasons for withdrawal noted in the Motion to be
13 Relieved as Counsel, the Court concludes that there is good cause to grant the Motion. The
14 Court further concludes that the withdrawal will not prejudice justice or unduly delay
15 resolution of the case; Douglas Geyman had only been attorney of record for three months
16 before requesting removal, and the period for discovery has not yet closed.

17 IT IS HEREBY ORDERED that the Motion to be Relieved as Counsel is GRANTED.
18 Douglas Geyman is no longer the attorney of record for Plaintiff Andrew McFadden in this
19 case.

20 Civil Local Rule 83.3 provides, in part:

21 Whenever a party has appeared by an attorney, the party may not
22 afterwards appear or act in the party's own behalf in the action, or take any step
23 in that action, unless an order of substitution has first have been made by the
24 court, after notice to the attorney of such party, and to the opposite party....

25 When an attorney of record for any person ceases to act for a party, such
26 party must appear in person or appoint another attorney by a written substitution
27 of attorney signed by the party, the attorney ceasing to act, and the newly
28 appointed attorney, or by a written designation filed in the case and served upon
the attorney ceasing to act....

S.D. Cal. Civ. L.R. 83.3(g)(1)-(2).

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1 IT IS HEREBY ORDERED that, no later than **ninety (90) days** from the date of this
2 Order, Plaintiff Andrew McFadden must file a motion for substitution pursuant to Local Rule
3 83.3, requesting an order of substitution and indicating whether he will represent himself or
4 have new counsel to represent him in this action. **If no motion for substitution is filed within**
5 **ninety (90) days from the date of this Order, Plaintiff's claims against Defendant City of**
6 **El Centro will be dismissed without prejudice.**

7 The Clerk of the Court shall mail a copy of this Order to Plaintiff Andrew McFadden
8 at his last known address: 1767 Desert Garden Dr., El Centro, CA 92243.

9 DATED: November 8, 2011

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11 **WILLIAM Q. HAYES**
12 United States District Judge
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