

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANTONIO LEDESMA, as personal
representative for the estate of
Maria Ledesma (deceased) and as
legal guardian of Nancy Osorio (a
minor),

Plaintiff,

vs.

RICHARD BRAHMER, d/b/a
Brahmer Trucking,

Defendant and
Cross-Claimant,

vs.

RICARDO OSORIO,

Defendant and
Cross-Claim
Defendant.

8:13CV310

ORDER

This matter is before the court on plaintiff's counsel, Jerome Okolo (Mr. Okolo), Motion to Withdraw (Filing No. 45). Mr. Okolo seeks to withdraw as counsel for Ricardo Osorio (Osorio). Mr. Okolo states he cannot represent Osorio after the court's October 16, 2014, Order, which found Osorio was not the common law spouse of the deceased. **See** Filing No. 45 - Motion. Mr. Okolo advises he notified Osorio of this situation and Osorio waived any objection to any conflict caused by Mr. Okolo's continued representation of the plaintiff in this case. **Id.**; Ex. 1 - Letter to Osorio and Osorio's Waiver.

The defendant, Richard Brahmer, objects to the withdrawal. **See** Filing No. 46 - Response. The defendant argues that at the time the Amended Complaint was filed, Mr. Okolo improperly maintained conflicting roles in this action as he represented Osorio as a plaintiff and as a defendant and asserted claims against Osorio. **Id.** The defendant argues Mr. Okolo may possess information that would otherwise not be discoverable due to the attorney-client privilege that can be used against Osorio. **Id.** The defendant also challenges Osorio's waiver and argues it remains questionable

whether the waiver was knowing, voluntary, and intelligent because the waiver is in English and Osorio cannot read English. **Id.** (citing Osorio Depo. at 8:20-23¹). The defendant lastly argues, in the event the court allows withdrawal, the court should appoint Osorio an attorney at Mr. Okolo's expense to protect Osorio's interests. **Id.**

In reply, Mr. Okolo represents the letter and waiver were explained to Osorio in Spanish by Oscar Ortiz, a Spanish language interpreter. **See** Filing No. 48 - Reply; Filing No. 48-1 - Ortiz Decl. Mr. Okolo represents Osorio fully understood and evidenced his assent to the waiver by signing the form attached to the letter. **Id.** Mr. Okolo also represents he advised Osorio to contact Osorio's insurance provider, The General Insurance Company, as The General has a contractual duty to provide Osorio a defense in this matter. **Id.** Mr. Okolo also so informed The General. **See** Filing No. 48-2 - Letters to The General.

Under the court's local rules,

An attorney of record may withdraw upon showing good cause, but is relieved of duties to the court, the client, and opposing attorneys only after (1) filing a motion to withdraw, (2) providing proof of service of the motion on the client, and (3) obtaining the court's leave to withdraw.

NEGenR 1.3(f).

The court recognizes Mr. Okolo previously represented Osorio as the plaintiff and Mr. Okolo, through his representation of the current plaintiff, has now filed a claim against Osorio as the defendant. However, at this time, there is no basis to find Osorio's waiver of this conflict is anything but knowing, voluntary, and intelligent. Mr. Okolo's letter and the waiver were explained to Osorio in Spanish. **See** Filing No. 48 - Reply; Filing No. 48-1 - Ortiz Decl. Mr. Okolo also served Osorio the present motion. Nevertheless, in the interest of ensuring Osorio's rights are protected in this matter, the court will afford Osorio an opportunity to respond to the motion, file a motion to disqualify, and/or obtain new counsel. The court declines the defendant's invitation to appoint Osorio counsel.

IT IS ORDERED:

1. Mr. Okolo's Motion to Withdraw (Filing No. 45) is held in abeyance.

¹ "Q. Can you read English? A. No. Q. Can you speak any English? A. Not too much. A little."

2. Osorio shall have to **on or before March 6, 2015**, to respond to the motion to withdraw by filing a brief with the Clerk of the Court. If no response is received or if counsel for Osorio has not entered an appearance by **March 6, 2015**, the motion to withdraw will be granted. If the motion to withdraw is granted and counsel has not entered an appearance, Osorio will be considered proceeding *pro se*.

3. The Clerk of the Court is directed to send a copy of this Order to Osorio at:

Ricardo Osorio
806 Powder Horn Drive
Smyrna, TN 37167

4. Mr. Okolo is directed to contact Osorio and provide the necessary translation of this Order to Osorio. Mr. Okolo shall file a notice with the court indicating he complied with this directive.

Dated this 21st day of January, 2015.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge