

scan

**SUPREME COURT - STATE OF NEW YORK  
IAS TERM PART 19 NASSAU COUNTY**

**PRESENT:**

**HONORABLE LEONARD B. AUSTIN**

Justice

**Motion R/D: 4-23-04**

**Submission Date: 4-23-04**

**Motion Sequence No.: 002/MOT D**

\_\_\_\_\_  
**BARRY RICHTER and NATIONWIDE  
ASSOCIATES, INC.,**

Plaintiff,

**COUNSEL FOR PLAINTIFF**

**Jules A. Epstein, P.C.**

**600 Old Country Road - Suite 338**

**Garden City, New York 11530**

- against -

**DANIEL PERLA and 142 5<sup>th</sup> AVENUE  
REALTY CORP.,**

Defendants.

**COUNSEL FOR DEFENDANTS**

**Cooperman, Lester, Miller, LLP**

**1129 Northern Boulevard - Suite 402**

**Manhasset, New York 11030**

\_\_\_\_\_  
x

**ORDER**

The following papers were read on the motion of Jules A. Epstein, P.C., for leave to withdraw as attorney for Plaintiffs:

Order to Show Cause dated April 14, 2004;

Affirmation of Jules A. Epstein, Esq. dated April 19, 2004.

**BACKGROUND**

Jules A. Epstein, P.C. is the attorney for the Plaintiffs in this action. In February 2004, Plaintiffs commenced a legal malpractice action against Jules Epstein and Jules A. Epstein, P.C. Since Mr. Epstein is now being sued by his clients, he moves for leave to withdraw as attorney for the Plaintiff.

DISCUSSION

An attorney may withdraw from representing a client upon a showing of good cause. An attorney should withdraw from representing a client when the lawyer's exercise of judgment on behalf of a client may be affected by the lawyer's financial or personal interest. 22 NYCRR §1200.20[DR 5-101]. An attorney cannot represent a client in one action while being sued by the same client in another action. See, Schenck v. Hill, Lent & Troescher, 130 A.D.2d 734 (2<sup>nd</sup> Dept., 1987).

An attorney is also under an ethical obligation to represent a client zealously within the bounds of the law. See generally, Code of Professional Responsibility, Canon 7. When an attorney cannot meet this obligation, then the attorney is required to withdraw as attorney for the party. 22 NYCRR 1200.32 (a)[DR-7-101(a)(2)]. Mr. Epstein's ability to zealously represent Plaintiff's in this action may well be affected by the fact that his clients have brought suit against him.

Additionally, his ability to communicate with his clients will be compromised by the fact that they are now in an adversarial relationship. See, 22 NYCRR 1200.35(a)[DR 7-104(a)].

Accordingly, it is,

**ORDERED**, that the motion of Jules A. Epstein, P.C. for leave to withdraw as attorney for the Plaintiffs in this action is **granted**; and it is further,

RICHTER, *et ano.*, v. PERLA, *et ano.*,  
Index No. 8760-02

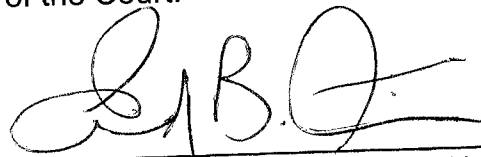
**ORDERED**, that a copy of this order together with a Notice to Appoint Another Counsel as provided for by CPLR 321(c) shall be served upon the Plaintiff Barry Richter pursuant to CPLR 308(1) or (2), upon the Plaintiff Nationwide Associates, Inc., pursuant to CPLR 311(a)(1) and upon the attorney for the Defendants pursuant to CPLR 2103(b)(2); and it is further,

**ORDERED**, that no proceedings shall be taken against the Plaintiffs without permission of the Court for a period of thirty days after service of a copy of this order and the Notice to Appoint Another Counsel; and it is further,

**ORDERED**, that incoming counsel for the Plaintiff or Plaintiff and counsel for the Defendants are directed to appear for a conference on June 21, 2004 at 9:30 a.m. Plaintiff Nationwide Associates, Inc. is advised that pursuant to CPLR 312(a) that a corporation must appear by attorney.

This constitutes the decision and order of the Court.

Dated: Mineola, NY  
May 12, 2004



Hon. LEONARD B. AUSTIN, J.S.C.

**ENTERED**

MAY 21 2004

WESTCHESTER COUNTY  
COUNTY CLERK'S OFFICE

**SUPREME COURT - STATE OF NEW YORK**  
**IAS TERM PART 19 NASSAU COUNTY**

**PRESENT:**

**HONORABLE LEONARD B. AUSTIN**

Justice

Motion R/D: 4-23-04

Submission Date: 4-23-04

Motion Sequence No.: 002/MOT D

\_\_\_\_\_  
**BARRY RICHTER and NATIONWIDE  
ASSOCIATES, INC.,**

Plaintiff,

**COUNSEL FOR PLAINTIFF**

Jules A. Epstein, P.C.

600 Old Country Road - Suite 338

Garden City, New York 11530

- against -

**DANIEL PERLA and 142 5<sup>th</sup> AVENUE  
REALTY CORP.,**

Defendants.

**COUNSEL FOR DEFENDANTS**

Cooperman, Lester, Miller, LLP

1129 Northern Boulevard - Suite 402

Manhasset, New York 11030

\_\_\_\_\_  
X

**ORDER**

The following papers were read on the motion of Jules A. Epstein, P.C., for leave to withdraw as attorney for Plaintiffs:

- Order to Show Cause dated April 14, 2004;
- Affirmation of Jules A. Epstein, Esq. dated April 19, 2004.

**BACKGROUND**

Jules A. Epstein, P.C. is the attorney for the Plaintiffs in this action. In February 2004, Plaintiffs commenced a legal malpractice action against Jules Epstein and Jules A. Epstein, P.C. Since Mr. Epstein is now being sued by his clients, he moves for leave to withdraw as attorney for the Plaintiff.

DISCUSSION

An attorney may withdraw from representing a client upon a showing of good cause. An attorney should withdraw from representing a client when the lawyer's exercise of judgment on behalf of a client may be affected by the lawyer's financial or personal interest. 22 NYCRR §1200.20[DR 5-101]. An attorney cannot represent a client in one action while being sued by the same client in another action. See, Schenck v. Hill, Lent & Troescher, 130 A.D.2d 734 (2<sup>nd</sup> Dept., 1987).

An attorney is also under an ethical obligation to represent a client zealously within the bounds of the law. See generally, Code of Professional Responsibility, Canon 7. When an attorney cannot meet this obligation, then the attorney is required to withdraw as attorney for the party. 22 NYCRR 1200.32 (a)[DR-7-101(a)(2)]. Mr. Epstein's ability to zealously represent Plaintiff's in this action may well be affected by the fact that his clients have brought suit against him.

Additionally, his ability to communicate with his clients will be compromised by the fact that they are now in an adversarial relationship. See, 22 NYCRR 1200.35(a)[DR 7-104(a)].

Accordingly, it is,

**ORDERED**, that the motion of Jules A. Epstein, P.C. for leave to withdraw as attorney for the Plaintiffs in this action is **granted**; and it is further,

RICHTER, *et ano.*, v. PERLA, *et ano.*,  
Index No. 8760-02

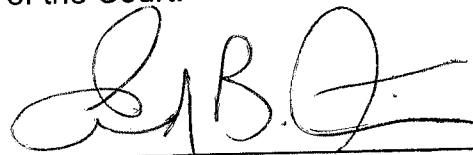
**ORDERED**, that a copy of this order together with a Notice to Appoint Another Counsel as provided for by CPLR 321(c) shall be served upon the Plaintiff Barry Richter pursuant to CPLR 308(1) or (2), upon the Plaintiff Nationwide Associates, Inc., pursuant to CPLR 311(a)(1) and upon the attorney for the Defendants pursuant to CPLR 2103(b)(2); and it is further,

**ORDERED**, that no proceedings shall be taken against the Plaintiffs without permission of the Court for a period of thirty days after service of a copy of this order and the Notice to Appoint Another Counsel; and it is further,

**ORDERED**, that incoming counsel for the Plaintiff or Plaintiff and counsel for the Defendants are directed to appear for a conference on June 21, 2004 at 9:30 a.m. Plaintiff Nationwide Associates, Inc. is advised that pursuant to CPLR 312(a) that a corporation must appear by attorney.

This constitutes the decision and order of the Court.

Dated: Mineola, NY  
May 12, 2004

  
Hon. LEONARD B. AUSTIN, J.S.C.

**ENTERED**

MAY 21 2004

NASSAU COUNTY  
COUNTY CLERK'S OFFICE