

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART O
ROCKAWAY ONE, LLC.,



Petitioner-Landlord,

-against-

MONIQUE NICHOLSON

Index No: L&T75136/08

ORDER

Respondent-Tenant,

REGINA NICHOLSON, JOHN NICHOLSON,
GEORGE NICHOLSON,
"JOHN DOE" & "JANE DOE",

Respondents-Undertenants.

Hon. Gilbert Badillo

In this motion, respondent, by her attorney, seeks an order disqualifying the Notice of Appearance filed by the Queens County Office of the District Attorney. In addition, the DA moves for an order enlarging time to file their memorandum in opposition to respondent's motion. The decision on both motions is combined for purposes of this order. The DA's motion is granted, as the late filing did not prejudice respondent's defense of this proceeding and currently all papers are submitted.

The underlying proceeding is a holdover petition served pursuant to termination of the tenancy based on the grounds of illegal use of the premises for the sale of narcotics. Respondent and all co-respondents were arrested on July 18, 2008 after the execution of a search warrant of the premises yielded a discovery of packages of marijuana. All charges were settled with plea bargains and the DA directed the landlord to commence this holdover proceeding.

The motion now seeks to exclude and/or limit the DA in their participation in the prosecution of this holdover case.

Respondent's attorney argues that the DA has no authority to appear on behalf of his office in the capacity of a legal representative nor should he be permitted to conduct portions of the trial including the questioning of witnesses and presenting evidence for submission at trial.

Petitioner's attorney and the DA oppose the motion arguing that his appearance has been put on the record both verbally and in writing. He adds that his experience with the criminal aspect of the case would ensure a "just conclusion" and strengthen "judicial economy of the proceeding and further the Court's and DA's mission of seeking justice for the People of New York...". He relies on RPAPL 711 & 715 to justify expansion of his criminal prosecutorial role. The DA also claims that respondent's counsel waived his right to object to his participation by not objecting to his verbal notices of appearance before the written notice was submitted.

Respondent's motion is granted to the extent that the DA is excluded from all actions traditionally reserved for a legal representative of record, such as questioning witnesses,

objecting to testimony or evidence and submitting evidence during the course of the trial. He is not excluded however, from sitting at petitioner counsel's table, assuming counsel invites him to do so, and conferring with or assisting him during the course of the trial.

The court recognizes that the civil and criminal issues are intimately related and that cooperation and assistance between petitioner's counsel and the DA may be necessary during the course of the trial and would ensure the expeditious procession of the case. RPAPL 715 recognizes that reality and the right of an enforcement agency to request landlord to bring and diligently prosecute this type of case or do so themselves if landlord fails to. In this case, petitioner timely initiated this proceeding in response to the DA's request but the DA is not formally a party to this action or representative of such. That does not prevent him in any way from providing petitioner's counsel with all relevant evidence. The DA has not made a compelling argument as to why it is necessary for his office to conduct direct or cross examination or present evidence when petitioner's counsel has access to the relevant evidence and is perfectly capable of presenting it himself. Other than citing vague public policy goals, the DA fails to demonstrate from what authority a non party can conduct a trial.

Additionally, the DA's assertion that respondent waived her right to object to his full participation because she did not object when he verbally noted his appearance on the record is incorrect. The minutes he submitted merely show his noted appearance as one that served as an introduction as an interested agent, not a party to the action. It certainly did not put respondent on notice that he had authority to conduct a trial. Respondent's counsel objected to his formal submission of a notice of appearance because *that* did indicate to some extent, his intention of participating in this action as representative party. Even if respondent didn't object at that point, the court could still exercise its own discretion in limiting the DA's participation, unless expressly waived by respondent.

Accordingly, the proceeding is set down for trial on June 23, 2009, 9:30am, Part O, Room 202.

Dated: June 12, 2009



Hon. Gilbert Badillo