

MEMO ENDORSED



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THE CITY OF NEW YORK  
LAW DEPARTMENT

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July 11, 2008

BY HAND DELIVERY

Honorable Lewis A. Kaplan  
United States District Court Judge  
Southern District of New York  
500 Pearl Street, Rm. 1310  
New York, New York 10007

Re: Anthony Hayton v. City of New York, et al., 08 CV 5582 (LAK)

Dear Judge Kaplan:

I am the Assistant Corporation Counsel handling the defense of this action on behalf of Defendant City of New York (the "City"). I am writing to request an extension of time to answer or otherwise respond to the complaint, from July 14, 2008 to September 15, 2008. I have conferred with plaintiffs' counsel, Matthew S. Flamm, Esq. and he has consented to the requested extension.

I note for the Court's information that according to the civil docket sheet, the other individually named defendant in this action, Police Officer Darryl Smallwood was purportedly served with process on June 30, 2008. A decision concerning this Office's representation of the individual Defendant has not yet been made and accordingly, this request for an extension of time is not made on his behalf. However, given the time involved in determining representation of the named officer, and in the interest of judicial economy, we would hope that the court may, *sua sponte*, extend the time to answer on behalf of all defendants.

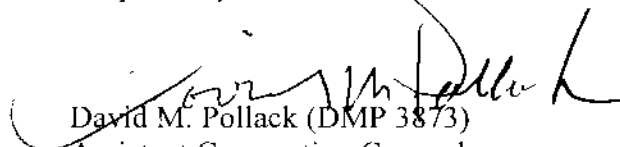
There are several reasons for seeking the extension. In his complaint, plaintiff alleges he was subjected to false arrest/imprisonment and excessive force. In order to respond to plaintiff's allegations, we will need to obtain records of the underlying criminal case.

The enlargement will allow this office time to conduct an inquiry to determine whether it could represent the other named defendant in this action. See General Municipal Law § 50(k); Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985); Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law). Defendants must then decide whether they wish to be represented by the Corporation Counsel, see Dunton v. County of Suffolk, 729 F.2d 903 (2d Cir. 1984). Only then can this office interview Defendants for the purposes of responding to the complaint.

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LEWIS A. KAPLAN, USDCJ  
7/15/08

No previous request for an extension has been made by either party. There are no scheduled conferences that will be affected by this proposed extension. Accordingly, it respectfully requested that the Court grant the City's application to extend its time to answer or otherwise respond to the complaint from July 14, 2008 to September 15, 2008.

Respectfully submitted,



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