

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

BERNARD L. SMITH,

Plaintiff,

v.

Case No. 05-4128-RDR

MEDTRONIC, INC,

Defendant.

**ORDER**

This case comes before the court on the motion and amended motion of Dennis Hawver to withdraw as counsel for plaintiff Bernard L. Smith (Docs. 23, 24).

D. Kan. Rule 83.5.5 governing withdrawal of counsel provides in part:

An attorney seeking to withdraw must file and serve a motion to withdraw on all counsel of record, and provide a proposed order for the court. In addition, the motion must be served either personally or by certified mail, restricted delivery, with return receipt requested on the withdrawing attorney's client. **Proof of personal service or the certified mail receipt, signed by the client, or a showing satisfactory to the court that the signature of the client could not be obtained, shall be filed with the clerk.** (Emphasis added.)

Mr. Hawver's motion states that "...both attorney and client request that Mr. Hawver be allowed to withdraw as counsel of record in the above captioned case." However, neither proof of personal service nor the certified mail receipt signed by plaintiff was filed with the clerk. Therefore, the court finds Mr. Hawver has not fully complied with D. Kan. Rules 83.5.5 and 5.4.4.

However, the court notes that plaintiff's counsel provided to the court by way of an

Exhibit to his motion, a handwritten letter signed by plaintiff himself, reflecting that plaintiff essentially is aware of and agrees with the motion to withdraw and in fact has secured replacement counsel in this matter. Finally, the court notes that this case is currently being transferred to the U.S. District Court for the District of Minnesota.<sup>1</sup> Therefore, in the interests of judicial efficiency, the court shall deem plaintiff's motion to be in compliance with D. Kan. Rules 83.5.5 and 5.4.4. and shall grant the motion accordingly.

**IT IS ORDERED** that Mr. Hawver's motion to withdraw (Docs. 23 and 24 ) is granted.

**IT IS SO ORDERED.**

Dated this 23rd day of May, 2006, at Topeka, Kansas.

s/ K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge

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<sup>1</sup>See Conditional Transfer Order (Doc. 25).