

DJW/bh

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

EMEL SMITH,

Plaintiff,

CIVIL ACTION

v.

No. 06-3146-KHV-DJW

L. E. BRUCE, et al.,

Defendants.

ORDER

Pending before the Court is the Motion to Withdraw (doc. 68) filed by Rodney J. Hoffman and Stanley N. Wilkins, counsel for Defendants Aramark and Doug Neuschafer.

D. Kan. Rule 83.5.5 requires the attorney seeking to withdraw to serve the motion on the client either personally or by certified mail, restricted delivery, with return receipt requested. The Rule also requires the attorney to provide to the Court proof that he/she has personally served the motion to withdraw on the client or to file the certified mail receipt signed by the client.¹ In the event that is not practicable, the attorney must make a showing satisfactory to the Court that the signature of the client could not be obtained.² In addition, the Rule requires the attorney to “provide evidence of notice to the attorney’s client containing (1) the admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order, and (2) the dates of any pending trial, hearing or conference.”³

¹D. Kan. Rule 83.5.5.

²*Id.*

³*Id.*

The instant motion does not satisfy any of these requirements. The Court will therefore deny the motion without prejudice to the refiling of a renewed motion that fully complies with D. Kan. Rule 83.5.5.

The Court notes that Defendants' counsel filed on November 26, 2007 a "Notice of Withdrawal" (doc. 69), which was docketed as a motion. To the extent the pleading was intended to be a notice of counsel's withdrawal, it is not effective. To the extent the pleading was intended to be a motion to withdraw, it fails to comply with D. Kan. Rule 83.5.5 in the same respects as the above-discussed motion, and, for the same reasons, must be denied.

IT IS THEREFORE ORDERED that the Motions to Withdraw filed by counsel for Defendants Aramark and Doug Neuschafer (doc. 68 and 69) are denied without prejudice.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 28th day of November 2007.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and *pro se* parties