



**IT IS ORDERED as set forth below:**

**Date: February 17, 2009**

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: R08-44335-PWB
	:	
DONALD EDWARD HUNT, JR.	:	
and CHRISTIE LEANNE HUNT,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE

**ORDER SUBSTITUTING COUNSEL AND PERMITTING  
WITHDRAWAL OF MACK O'REAR AS ATTORNEY FOR DEBTOR**

Before the Court is the motion of Mack O'Rear to withdraw as the Debtors' counsel of record and the Debtors' motion to substitute Robert S. Toomey as their counsel of record. It appearing that the Debtors consent to the substitution, the Court grants both motions.

In granting the motions, however, the Court notes that, if the Debtors had not affirmatively consented to the retention of Mr. Toomey as their attorney of record, the Court would not have granted Mr. O'Rear's motion to withdraw. First, as a procedural matter, the motion to withdraw has not been served upon the Debtors and does not comply at all with BLR 9010-5.

More troubling is the assertion that the reason for the withdrawal is that Mr. O'Rear "represented the debtors in the Eastern District of Tennessee, but now that the case has been transferred to Georgia, he has not been admitted to practice before this court and therefore should be removed as counsel of record." In this regard, the Court makes the following observations.

Transfer of the case to this District was a foreseeable result at its outset because the Debtors, who are Georgia residents and whose principal assets, based on their bankruptcy schedules, are located in the Northern District of Georgia, could not properly file bankruptcy in the Eastern District of Tennessee. Transfer created a problem for Mr. O'Rear, perhaps one of his own making, but that problem does not provide a reason to permit withdrawal that would leave clients who expected to have representation in the case without a lawyer.

If a lawyer files a case for a debtor in an improper district, the lawyer must be prepared to deal with the consequences of transfer to the proper district if it occurs. Because the lawyer by taking the case has promised to represent the client in it, the lawyer has a duty to represent the client fully unless and until the client agrees to substitution of counsel. If the lawyer who files a case transferred to this district is not a member of the Court's bar and the client does not retain substitute counsel who promptly appears in the case, the lawyer must file an application to appear *pro hac vice* in the Northern District of Georgia.

Depending on the circumstances, the client may expect that the attorney's fees for representation in the case with new counsel due to transfer of the case will not be more than they would have been if the client had retained counsel to file in the proper jurisdiction to begin with. In any event, the provisions of 11 U.S.C. §§ 329(b) permit the Court to inquire as to the reasonableness of fees charged by an attorney for a debtor who files a case in a district in which venue is not proper. Indeed, the filing of a case in an improper district might warrant the

disgorgement of fees paid by the debtor.

In this case, the appearance of Mr. Toomey in this case and the fact that Mr. O'Rear has not received any compensation from the Debtors moots any of the potential problems addressed above. Accordingly, it is

ORDERED that the Debtors' motion to substitute counsel and Mr. O'Rear's motion to withdraw are granted. The Clerk is directed to substitute Robert S. Toomey for Mack O'Rear as the Debtors' attorney of record.

End of Order

Distribution List

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