

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	
)	Chapter 7
Cristina Renee Hanson,)	BKY Case No. 03-40673-NCD
)	
Debtor.)	

**TRUSTEE'S RESPONSE TO MOTION BY DEBTOR'S
COUNSEL TO WITHDRAW FROM CASE**

For her response to the motion of Craig W. Andresen to withdraw as Debtor's counsel, the Trustee states as follows:

Mr. Andresen's Motion fails to state any reason to justify his withdrawal. No substitute counsel for Debtor is identified. While there may be valid reasons for Mr. Andresen to no longer represent the debtor, the Court and parties in interest are entitled to some indication of the basis for such a motion.

Whether or not the Court deems it appropriate for Mr. Andresen to withdraw as Debtor's counsel, counsel's actions in connection with this case should not be ignored or deemed moot by his withdrawal. On the record at the initial hearing on the Trustee's Objection to Claimed Exempt Property, held August 4, 2004, Mr. Andresen declined to answer the Court's own direct inquiry as to counsel's knowledge of the likelihood of the existence of a personal injury claim by Debtor given counsel's professed frequent referral experience with Debtor's personal injury attorney at the Milavetz firm (*See*, Debtor's Memorandum of Law and Fact in Support of Amendment of Exemption, para. 2). To this date, attorney Andresen has not, to the best of the Trustee's knowledge, answered the question of how he could not have known of the personal injury claim and why he

prepared and filed schedules that failed to list it.

It would be highly inappropriate for Mr. Andresen to use a withdraw from further representation of the debtor in this case to avoid being required to answer to the parties and to the Court as to his role in the matter before the Court. Consideration should be given to any appropriate sanctions for counsel's role. An attorney has a duty to make a reasonable inquiry before filing petitions, schedules and statements to verify that the filings are well grounded in fact or warranted by existing law. Fed. R. Bankr. P. 9011. Failing to make reasonable inquiry, or knowing and failing to disclose the information, of the existence of a personal injury claim by an individual referred by a personal injury attorney with whom the bankruptcy attorney has a history of referral and consultation (*See*, Debtor's Memorandum of Law and Fact in Support of Amendment of Exemption, para. 2) is a breach of that duty. Monetary sanctions plus disallowance of attorney's fees may be imposed against counsel for intentional omissions in and failure to file accurate schedules. *See, e.g., In re Moix-McNutt*, 220 B.R. 631 (Bankr. E.D. Ark. 1998) (\$5,000 sanctions and disgorgement of fees imposed against Chapter 13 attorney for intentional omission of a debt). The Court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of the Code as set forth in the compensation provisions, including § 327, § 329, § 330 and § 331. *See, e.g., In re Downs*, 103 F.3d 472, 479 (6th Cir. 1996). The Court's inherent power is granted by 11 U.S.C. §105.

Mr. Andresen's lack of candor with this tribunal, the filing of schedules that omit material information and reluctance to cooperate with prompt and full correction of the deficiencies of disclosure, warrant, at a minimum, consideration of measures suitable to address counsel's actions herein and discourage similar behavior in the future.

LAPP, LIBRA, THOMSON, STOEBNER
& PUSCH, CHARTERED

Dated: October 1, 2004

/e/ Julia A. Christians
Julia A. Christians (#157867)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
612/ 338-5815

Attorneys for the Trustee

VERIFICATION

Julia A. Christians, being duly sworn, says that she is the Chapter 7 Trustee in this action, that she has read this Response to Motion by Debtor's Counsel to Withdraw from Case and that the facts stated therein are true of her own knowledge, to the best of her information.

/e/ Julia A. Christians
Julia A. Christians

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UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on October 1, 2004, I faxed copies of the attached **Trustee's Response to Motion by Debtor's Counsel to Withdraw From Case** by facsimile to each entity named below at the facsimile number stated below for each entity:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Craig W. Andresen
2001 Killebrew Drive
Suite 330
Bloomington, MN 55425

Facsimile: 612-664-5516

Facsimile: 952-854-4114

Executed on: October 1, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stuebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815