

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Case No. 04-33379-GFK

Darrell Eugene Allen
Bonnie Jean Allen

Debtor(s).

**MEMORANDUM OF LAW AND SUPPORT OF MOTION TO WITHDRAW AS
ATTORNEY OF RECORD**

Jerome W. Perry has filed a Motion for Leave to Withdraw as Attorney for Debtor(s) in the above-captioned matter.

Local Rule 9010-3(e) provides, in pertinent part: “(e) SUBSTITUTION; WITHDRAWAL. (2) **Withdrawal**: “An attorney in a bankruptcy case whose employment was subject to approval by the Court, an attorney for any party in an adversary proceeding, or an attorney for the Debtor in a Chapter 7 or 13 case who wishes to withdraw without a substitution of attorney shall make a motion for leave to withdraw.”

Subsection 4 of the above local rule requires that an Order should be entered allowing the original attorney to withdraw. [See also **in re: Johnson** 291B.R.462 (Minn. 2003). Although not the issue decided in this case there is a discussion of when and how an attorney should withdraw as the attorney from record at **page 467.**]

Your attorney of record has spent many more hours than the fee charged in this case. The Debtors initially brought most of the information requested to the Debtor’s attorney of record, Debtors had numerous creditors and judgments against them. He was also disabled and was and is a good candidate for discharge under Chapter 7.

The undersigned attorney also wrote a letter to the Honorable Lawrence Collins of the District Court of the Third Judicial District for the State of Minnesota on behalf of Debtors informing the court of Attorney's representation of Debtors in a Chapter 7 Liquidation.

After filing the petitions and schedules it was learned that there were other creditors that needed to be notified of the pending Chapter 7, §341 Hearing.

The Debtor, Darrell E. Allen, said he would obtain the information so as to amend his petition and schedules but never contacted Debtor's attorney again. Debtor's attorney then tried to contact him at his last known address and was told that he had moved.

At the first §341 Hearing the Debtors failed to appear and a second was scheduled. At the second §341 Hearing the Debtors again failed to appear although notices were given on both occasions.

This attorney of record is not sure Debtors personal situation. Only, had the Debtors fully cooperated, there is no reason why the Debtors should not be discharged. This attorney is perplexed as to why the Debtors have just decided to make himself unavailable. However, under the circumstances this attorney cannot continue to act as the attorney for the debtors in the above-captioned matter and requests a withdrawal as attorney of record.

Dated: September 23, 2004

/e/ Jerome W. Perry
JEROME W. PERRY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Case No. 04-33379-GFK

Darrell Eugene Allen
Bonnie Jean Allen

Debtor(s).

AFFIDAVIT OF JEROME W. PERRY

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

I, **JEROME W. PERRY**, being duly sworn, hereby alleges and states as follows:

1. That I am attorney licensed to practice law in the State of Minnesota and before the United States Federal Bankruptcy Court for the district of Minnesota.
2. That among other items, the following are the terms that the Debtor, Darrell E. Allen and Bonnie J. Allen agreed to at the time they retained Perry Law Office to assist them in filing a Petition for liquidation under Chapter 7.
3. That the Debtors signed a Retainer Agreement in our office on March 15, 2004 and it includes the following language:

 "We may withdraw our representation at any time if you fail to assist us or cooperate, or if we determine, at our discretion, that to continue our services would be unethical or impractical."

4. This Affidavit is given in support of Motion for Leave to Withdraw.

FURTHER, YOUR AFFIANT SAYETH NOT.

Dated this 2^{3rd} day of September, 2004.

/e/Jerome W. Perry
Jerome W. Perry

Subscribed and Sworn to before me this 2^{3rd} day of September, 2004.

/e/Jill Sanvick
NOTARY PUBLIC

My commission expires on
January 31, 2008

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Darrell Eugene Allen & Bonnie Jean Allen,

Debtors.

Chapter 7

Bky. 04-33379

CERTIFICATE OF SERVICE

I, Jerome W. Perry, certify under penalty of perjury that on September 23, 2004, I served a copy of the Memorandum of Law together with the Affidavit of Jerome W. Perry in the above-referenced case by placing said copies by U.S. mail, postage prepaid, to each person named below:

Clerk of Bankruptcy Court
200 US Courthouse
316 North Robert Street
St. Paul, MN 55101

United States Trustee
1015 US Courthouse
300 South 4th Street
Minneapolis, MN 55415

Darrell Allen
Bonnie Allen
100 5th Avenue SE
Stewartville, MN 55976

Maschka, Riedy & Ries
Attention: Mr. Charles W. Ries, Trustee
Suite 200, Union Square Business Center
201 North Broad Street
PO Box 7
Mankato, MN 56002-0007

Dated: September 23, 2004, 2004

/e/Jerome W. Perry
JEROME W. PERRY