UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
JERRY L. SMITH	)	CASE NO. 03-41245
BARBARA A. SMITH	)	
	)	
Debtors	)	

DECISION AND ORDER

At Lafayette, Indiana, on September 25, 2007.

By the court's order of March 15, 2007, debtors' prior counsel, Kevin Schmidt, was required retain local counsel in all cases now or hereafter pending in which he or a member of his firm is counsel of record. The order was entered after Mr. Schmidt failed to appear for a pre-trial conference and was based upon an earlier order, in a separate case, which had specifically warned him:

> if, at anytime after the date of this order, counsel fails to appear for any proceedings, in any case, for any reason whatsoever, when the court expects him to be present, counsel will be required to retain as local counsel an attorney who maintains an office in the division of this court in which such case is pending. Matter of Bierman, Case No. 04-4156, Order of August 26, 2005.

Mr. Schmidt has filed a motion, together with a brief in support thereof, requesting relief from the court's order requiring local counsel. It is that motion which is presently before the court.

The present motion was filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, as made applicable to bankruptcy proceedings through Rule 9024 of the Federal Rules of Bankruptcy Procedure. The motion alleges that the failure to appear was the result of excusable neglect which justifies relief from the court's order to retain local counsel. Determinations of excusable neglect are equitable, "taking account of all relevant circumstances surrounding the party's omission."

Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993), and are addressed to the court's discretion. Lee v. Village of River Forest, 936 F.2d 976, 979 (7th Cir. 1991); Reinsurance Co. of America, Inc. v. Administratia Asigurarilor de Stat, 902 F.2d 1275, 1277 (7th Cir. 1990).

Generally, when, as a result of the repeated failure to attend hearings, the court orders an attorney and/or the members of a firm to retain local counsel, its purpose in doing so is to both impress upon counsel the importance of appearing for scheduled proceedings and to ensure that they have effective mechanisms or procedures in place designed to make them aware of any hearings scheduled in the matters in which they are involved. See, In re Philbert, 340 B.R. 886, 890-91 (Bankr. N.D. Ind. 2006); In re Shirar, 2006 WL 2037327 (Bankr. N.D. Ind. 2006).

In this instance, counsel's failure to appear was not a result of ineffective mechanisms to alert him to scheduled hearings or any decision on his part not to attend. Instead, it was because the debtor, Barbara Smith, who also happened to be counsel's secretary, deliberately circumvented those procedures because, apparently out of embarrassment, she did not want him to learn about her failure to properly perform the obligations required by the confirmed plan. Counsel's motion indicates that he has taken measures to prevent a repetition of this incident. Furthermore, the debtor who was the source of the most recent problem is no longer in his employ.

Excluding the hearings in this case, Mr. Schmidt has not, since the order of August 26, 2005, missed other hearings held before this court and he has demonstrated that he sufficiently appreciates the importance of monitoring his cases and appearing for matters scheduled in them. Furthermore, the events that prompted the court to issue the order of March 15, 2007 seem to be extraordinary.

Mr. Schmidt's motion for relief from the order of March 15, 2007 is GRANTED and that part

of the order which requires him to retain local counsel is vacated.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court