

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

<b>MICHAEL S. MAPES, et al.,</b>	)	
	)	
<b>Plaintiffs</b>	)	<b>8:07CV77</b>
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>WELLINGTON CAPITAL GROUP,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the court on the motion of Michael J. Mooney, Robert A. Mooney, Elizabeth M. Callaghan and their law firm Gross & Welch, P.C.. L.L.O. to withdraw as counsel for the defendant ([Filing No. 103](#)). Moving counsel filed and index of evidence in support of the motion ([Filing No. 104](#)). Counsel states there has been a breakdown and complete lack of communication between the defendant and counsel. Counsel state they made attempts to advise the defendant and Mr. Frank Amodeo about their intentions to withdraw, including correspondence sent to the defendant's last known registered agent.

The court notes no substitute counsel has yet appeared in this matter for the defendant. The Eighth Circuit has held that "the law does not allow a corporation to proceed *pro se*." [\*Ackra Direct Mktg. Corp. v. Fingerhut Corp.\*, 86 F.3d 852, 857 \(8th Cir. 1996\)](#); see also [\*United States v. Van Stelton\*, 988 F.2d 70, 70 \(8th Cir. 1993\)](#) (noting that a corporation may not appear *pro se*); [\*Carr Enters., Inc. v. United States\*, 698 F.2d 952, 953 \(8th Cir. 1983\)](#) (noting "[i]t is settled law that a corporation may be represented only by licensed counsel"). In fact, according to the Eighth Circuit, a corporation is technically in default as of the date its counsel is permitted to withdraw from the case without substitute counsel appearing. [\*Ackra Direct\*, 86 F.3d at 857](#). Under the circumstances, the court concludes counsel shall not be given leave to withdraw as attorneys for the defendant until substitute counsel has entered an appearance or other order of the court. The defendant shall have an opportunity to obtain substitute counsel. Accordingly,

**IT IS ORDERED:**

1. Michael J. Mooney, Robert A. Mooney, Elizabeth M. Callaghan and their law firm Gross & Welch, P.C.. L.L.O.'s motion to withdraw as counsel for the defendant ([Filing No. 103](#)) is held in abeyance until October 31, 2008.

2. The defendant shall have substitute counsel enter an appearance on their behalf **on or before October 31, 2008**. If the defendant fails to have substitute counsel enter an appearance by that date the court may strike the answer and claims of the defendant and enter default, pursuant to Fed. R. Civ. P. 37(b)(2)(C).

3. Moving counsel shall immediately serve a copy of this order on the defendant and file a certificate of service therefore.

DATED this 30th day of September, 2008.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge