



JUDGE AMY R. SMITH
DANE COUNTY CIRCUIT COURT, BRANCH 4
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Comments:

Attorney Overland is not licensed to practice law in Wisconsin, nor was she so licensed at the time of the filing of the Petition. She is not a party to this action.

Subsequent to filing the Petition, Attorney Overland filed a letter bearing a date of August 16, 2012, but is date-stamped by the Dane County Clerk of Courts Office as received on August 17, 2012. With that letter, Attorney Overland included a copy of a *Pro Hac Vice* Petition and Affidavit which she stated had been filed with the Commission. Attorney Overland represented Petitioners in proceedings before the Commission, and stated in her letter that the "Administrative Law Judge determined that Pro Hac Vice admission was not required." (Response Brief, p. 4.)

As of the date of this Decision, no attorney licensed in Wisconsin has appeared in this action on behalf of Petitioners, nor has Attorney Overland been admitted *pro hac vice* by this court. Attorney Overland, as of October 16, 2012, never paid a \$50 *pro hac vice* admission fee to the Wisconsin Office of Lawyer Regulation. (Reply Brief, Affidavit of Justin W. Chasco, para. 2.)

CONTROLLING LAW

Attorneys must be licensed in Wisconsin to practice law in the state. *Jadair Inc. v. U. S. Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401, 407 (1997); Wis. Stat. § 757.30. A pleading signed only by an unlicensed attorney is fundamentally defective. *Schaefer v. Riegelman*, 2002 WI 18, ¶¶ 7-9, 38, 250 Wis. 2d 494, 639 N.W.2d 715. When a pleading is fundamentally defective, the court lacks jurisdiction over the case. The party who is alleged to have filed a defective pleading has the burden to show that there was no defect. *Id.*, ¶25.

Attorneys who are not licensed to practice in Wisconsin may obtain *pro hac vice* admission as follows:

A court or judge in this state may allow a nonresident counsel to appear and participate in a particular action or proceeding in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding. An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter, provided that nonresident counsel files a notice of the order granting permission with the court handling the subsequent appellate or circuit court action or proceeding.

Supreme Court Rule 10.03(4)(b) [emphasis added]. Subsections 1. and 2. of that rule set forth additional requirements:

1. Counsel who seek to provide legal services under SCR 10.03(4)(b) shall provide the information listed in Appendix A to this rule. The applicant may also include additional information supporting the request for admission *pro hac vice*.
2. Counsel who seek to provide legal services under SCR 10.03(4)(b) shall pay a nonrefundable fee of fifty dollars (\$50) to the Office of Lawyer Regulation for each application for admission *pro hac vice*. The fee shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be appearing on behalf of an indigent client in the proceeding and will be charging no fee for the appearance.

[emphasis added]

The Supreme Court Rules also provide that:

If representing a party before an agency of this state is limited to lawyers, an administrative law judge or hearing examiner for a state agency may, using the same standards and procedures as a court, allow a nonresident counsel who has been retained to appear in a particular agency proceeding to appear and participate in that proceeding without being in association with an active member of the state bar of Wisconsin.

Id., 10.03(4)(d).

ANALYSIS

Respondent argues that the court should strike the Petition because it was signed by an unlicensed attorney. (Brief, p. 4.) Petitioners contend that under the Supreme Court Rules, once Attorney Overland was allowed to appear before the Commission, “this privilege extends to subsequent Circuit Court and Appellate proceedings.” (Response Brief, p. 1.) Respondent

replies that only *pro hac vice* admission by a court extends to subsequent proceedings. (Reply Brief, p. 3.)

Respondent is correct. Under SCR 10.03(4)(b), "An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter." This clearly refers to an order by a court, since SCR 10.03(4)(b) only discusses orders by a "court or judge." The Supreme Court Rule's definition of a "judge" does not encompass administrative law judges (hereinafter, singularly, "ALJ"). SCR 60.01(8).

Moreover, the ALJ did not issue an order allowing nonresident counsel to appear. (Response Brief, p. 4.) Petitioners provide no authority, and the court knows of none, for Petitioners' implicit argument that SCR 10.03(4)(b) should apply even when no order ever existed, and when an ALJ may have arguably given "tacit approval" for an unlicensed attorney to participate in an administrative proceeding. (*Id.*)

Petitioners argue further that because representing a party before the Commission is not limited to attorneys, the requirement to appear in association with a licensed attorney does not apply. (Response Brief, p. 4.) SCR 10.03(4)(d). This assertion may be true for the purposes of participating in administrative proceedings before the Commission. Yet that does not mean that an attorney unlicensed to practice in this state who appears before the Commission can represent parties alone in a subsequent circuit court action without first achieving *pro hac vice* status. The rules requiring a court order and association with a licensed attorney do not provide for exceptions. SCR 10.03(4)(b).

For an unlicensed attorney to participate in litigation in a circuit court, the attorney must appear in association with a Wisconsin-licensed attorney, and obtain *pro hac vice* admission as

provided in the Supreme Court Rules. These Rules set forth specific procedures and, among other things, typically require a \$50 fee to be paid to the Office of Lawyer regulation. SCR 10.03(4)(b). Here, the Joint Petition for Judicial Review was signed only by an unlicensed attorney, no licensed Wisconsin attorney has ever appeared on Petitioners' behalf in this case, and the typical required fee has not been paid. The court also notes that the only materials related to pursuing *pro hac vice* admission were filed subsequent to the filing of the Petition.

Because Attorney Overland had not been admitted *pro hac vice* by a court order at the time she filed the Joint Petition, the Joint Petition was filed by a non-party who was an attorney not licensed in this state. In sum, this court concludes that Petitioners have failed to meet their burden to show that the Petition is not defective.

The Petition filed by Attorney Overland is therefore fundamentally defective, this case has not been properly commenced, and the court therefore lacks jurisdiction. For these reasons, the court grants Respondent's Motion to Strike.

CONCLUSION

For the reasons stated above, Respondent's Motion to Strike is **GRANTED**. Because Respondents are the prevailing party in this Decision, Respondents are **ORDERED** to draft any necessary orders to carry out the intent of this Decision.

SO ORDERED. Dated this 27th day of October, 2012.

BY THE COURT:



Hon. Amy R. Smith
Circuit Court Judge, Branch 4

cc: Attorney Carol A. Overland
Attorney Justin W. Chasco
Attorney Diane M. Ramthun
Attorney Cynthia Erina Smith