



IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE APPLICATION FOR PRO HAC VICE ADMISSION OF
O. RUSSEL MURRAY

SUPREME COURT NO. 2007-ADM-0017-PHV

ORDER REVOKING ADMISSION

¶ 1 On August 9, 2007, this Court heard argument on Respondents' motion to reconsider the *pro hac vice* admission of O. Russel Murray, Esq. After considering the arguments presented, the Court ruled from the bench and revoked Mr. Murray's admission. The Court now issues this Order to memorialize its findings and conclusion.

I

¶ 2 Respondents filed the underlying action on April 26, 2007. On June 9, 2007, they noticed the deposition of Defendant Paul Dingee. On July 5, 2007, Mr. Murray moved for admission *pro hac vice* to represent Dingee and other parties. On July 9, 2007, Respondents objected to Mr. Murray's admission, citing alleged conflicts of interest due to Mr. Murray's prior representation of defendants Robert Pfaff and John Larson.

¶ 3 On July 11, 2007, while his application was pending, Mr. Murray appeared as counsel for Dingee at the deposition. No attorney admitted in the CNMI appeared with him, although Pfaff was represented by David York, who also is not admitted to practice law in the Commonwealth and at the time had yet to apply for *pro hac vice* admission.

¶ 4 On July 17, 2007, unaware of Mr. Murray's participation in the deposition, the Court granted the application, and directed Respondents to raise any conflicts with the court below. On July 24, 2007, Respondents moved for reconsideration, asserting that Mr. Murray engaged in the unauthorized practice of law by appearing at the deposition.

II

¶ 5 Admission *pro hac vice* before the Commonwealth courts "is not a guaranteed right. An attorney is granted *pro hac* admission before the Commonwealth courts at the discretion of the Court." *In re Pro Hac Vice Application of Richard Kendall, Esq.*, Pro Hac Vice Supreme Court

No. 2003-901 (N.M.I. Sup Ct. June 18, 2003), at 1 (citing *Leis v. Flint*, 439 U.S. 438, 441-42 (1979)). An attorney who engages in the unauthorized practice of law will not be admitted to practice. *Saipan LauLau Dev., Inc. v. Super. Ct.*, 2001 MP 2, 6 N.M.I. 191 (attorney who had, *inter alia*, engaged in the unauthorized practice not entitled to practice in the CNMI); *see Disciplinary Counsel v. Fucetola*, 753 N.E. 2d 180, 180-81 (Ohio 2001) (pro hac vice application denied and attorney enjoined from practice in Ohio for practicing without admission); *Erbacci, Cerone & Moriaty Ltd. v. United States*, 923 F. Supp. 482, 485 (S.D.N.Y. 1996) (similar).

¶ 6 Com. R. Prof. Cond. 5.5 prohibits attorneys who are not admitted from participating in CNMI proceedings. Mr. Murray appeared at the deposition of Dingee, defended the deposition, and questioned the witness at the deposition. The Rule does not permit appearance at a deposition by a person who is not admitted, even if a *pro hac* application is pending. If filing an application alone were sufficient, then it would be the applicant, and not the Court, that controlled admission to practice. Thus, Mr. Murray’s appearance prior to his admission constituted the unauthorized practice of law.

¶ 7 Mr. Murray had the power to comply with the rules. He could have applied for admission promptly when the underlying case began; he could have had another attorney admitted to practice appear; or he could have asked to delay the deposition while his application was heard. Instead, he appeared without admission from this Court.

¶ 8 Mr. Murray cites Rule 5.5(c)(1), which permits “temporary services” that are “undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter.” Here, Mr. Murray had been representing Dingee for months, and the only attorney who “actively participated” with Murray at the deposition was Mr. York, who also is not admitted in the Commonwealth.

¶ 9 Mr. Murray also cites Rule 5.5(c)(2), which allows “temporary services” that “are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized.” Mr. Murray was not providing temporary services; he was appearing in a proceeding to continue a representation begun months earlier. He also could not have a “reasonable expectation” of admission. He knew that Respondents had objected to his admission. Although the Court ultimately referred the conflicts issue to the court below, it was not for Mr. Murray to presume what this Court’s ruling would be. Indeed, Respondents have since raised defects in the documents Mr. Murray used to gain admission, including that he submitted declarations that failed to satisfy 7 CMC §§ 3305 and 3307.

¶ 10 Finally, admission *pro hac vice* must be necessary for the party that is to be represented. Here, no such statement is included in Mr. Murray's application, and it is plain that one of the many attorneys lawfully admitted to appear in the Commonwealth courts could have defended the deposition while Mr. Murray's application was pending.

III

¶ 11 Having concluded that Mr. Murray engaged in the unauthorized practice of law in a Commonwealth proceeding, the Court hereby revokes Mr. Murray's admission to practice *pro hac vice*. As the Court advised Mr. Murray at the hearing, he may appeal the revocation to a three judge panel of this Court within thirty days hereof.

SO ORDERED this 14th day of August, 2007.

/s/

ALEXANDRO C. CASTRO

Associate Justice