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Jonathan Grayson

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

IN RE THE APPLICATION FOR PRO HAC VICE ADMISSION OF
DAVID A. YORK

SUPREME COURT NO. 2007-ADM-0024-PHV

ORDER DENYING APPLICANT PRO HAC VICE ADMISSION

¶ 1 On July 18, 2007, Petitioner David York, Esq. petitioned this Court for admission *pro hac vice*. On July 24, 2007, Respondents filed an objection to the petition. On August 13, 2007, Mr. York stated he was “withdrawing” his application, but did not seek leave from the Court to do so. After considering the arguments presented, the Court denies Mr. York’s attempt to “withdraw” his application without seeking leave from the Court, and denies Mr. York’s petition for admission based upon his unauthorized practice of law in a CNMI legal proceeding.

I

¶ 2 Respondents filed the underlying action on April 26, 2007. On June 9, 2007, they noticed the deposition of defendant Paul Dingee.

¶ 3 On July 11, 2007, Mr. York appeared at the Dingee deposition on behalf of Robert Pfaff, a defendant in the underlying action. Mr. York made objections on record and participated in the deposition. No attorney admitted in the CNMI appeared with him.

¶ 4 On July 18, 2004, Mr. York petitioned this Court for admission *pro hac vice*. Respondents objected to his petition on July 24, 2004, on the ground that Mr. York had committed the unauthorized practice of the law by appearing at the deposition.

¶ 5 On August 9, 2007, this Court ruled from the bench that a second attorney, O. Russell Murray, had engaged in the unauthorized practice of law by appearing at the Dingee deposition without admission *pro hac vice* (a ruling subsequently memorialized in an Order issued on August 14, 2007). On August 13, 2007, apparently in an attempt to avoid such a determination in his case, Mr. York notified the Court that he was “withdrawing” his application.

II

¶ 6 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 & Moriarty Ltd. v. United States*, 923 F. Supp. 482, 485 (S.D.N.Y. 1996) (similar).

¶ 7 Com. R. Prof. Cond. 5.5 prohibits attorneys who are not admitted from participating in CNMI proceedings. Mr. York appeared at and participated in the Dingee deposition on behalf of his client. 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. Moreover, at the time of his appearance at the Dingee deposition, Mr. York had not even filed an application for *pro hac vice* admission.

¶ 8 Mr. York 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 and thereby violated the Rules of Professional Conduct.

¶ 9 Nor can the Court accept Mr. York’s unilateral attempt to “withdraw” his application. The Court has plenary control over who may practice law in the Commonwealth. *In re Matter of Pro Hac Vice Admissions*, General Order 99-900 (N.M.I. Sup Ct. Aug. 23, 1999). Once an application for admission *pro hac vice* is filed, an applicant is subject to the jurisdiction of this Court, including its disciplinary powers over admission, and the applicant can only withdraw the application with the Court’s permission.

¶ 10 Here, Mr. York failed to seek permission from the Court to “withdraw” his application, and such permission would not have been granted if sought. It is apparent that Mr. York’s “withdrawal” was only filed in response to the ruling in Mr. Murray’s case and to avoid a similar ruling in this case. This Court cannot countenance the unauthorized practice of law in a CNMI proceeding, nor can it accept that an applicant can remove himself from the Court’s jurisdiction

after an ethical violation becomes apparent. Rather, it is this Court's obligation to enforce the Rules of Professional Conduct, and to deny the application outright.

III

¶ 11 Having concluded that Mr. York engaged in the unauthorized practice of law in a Commonwealth proceeding, the Court hereby denies Mr. York's application to practice *pro hac vice*. He may appeal this ruling to a three judge panel of this Court within thirty days hereof.

SO ORDERED this 17th day of August, 2007.

/s/

ALEXANDRO C. CASTRO
Associate Justice