

The Supreme Court of South Carolina

In re: Amendments to Rule 404, SCACR.

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution, we hereby amend Rule 404, SCACR, to increase the fee for admission pro hac vice to \$250 and to require lawyers not admitted to practice law in South Carolina to file a verified statement and pay a \$250 fee when providing legal services pursuant to newly amended Rule 5.5(c)(3) of the Rules of Professional Conduct, Rule 407.

These amendments shall become effective October 1, 2005. A copy of Rule 404, as amended, is attached.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E. C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina
June 20, 2005

RULE 404

ADMISSION PRO HAC VICE AND APPEARANCES BY NON-SOUTH CAROLINA LAWYERS IN ARBITRATION, MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS IN SOUTH CAROLINA

(a) Admission Pro Hac Vice; Tribunal Defined. Upon written application, an attorney who is not admitted to practice law in South Carolina and who is admitted and authorized to practice law in the highest court of another state or the District of Columbia may appear *pro hac vice* in any action or proceeding before a tribunal of this state if an attorney admitted to practice law in South Carolina is associated as attorney of record. For the purpose of this rule, a “tribunal” includes any court of this state, and the South Carolina Administrative Law Court and any South Carolina agency authorized to hear and determine contested cases as defined under S.C. Code Ann. § 1-23-310.

(b) Prohibitions on Admission Pro Hac Vice. An attorney may not appear *pro hac vice* if the attorney is a resident of South Carolina, is regularly employed in South Carolina, or is regularly engaged in the practice of law or in substantial business or professional activities in South Carolina, unless the attorney has filed an application for admission under Rule 402, SCACR.

(c) Application for Admission Pro Hac Vice. An attorney desiring to appear *pro hac vice* shall file with the tribunal in which the matter is pending, prior to making an appearance, an Application for Admission *Pro Hac Vice* which contains the following information:

- (1) the applicant's residence and office addresses;
- (2) the state and federal courts to which the applicant has been admitted to practice and the dates of admission;
- (3) whether the applicant is a member in good standing in those courts, and a certificate of good standing of the Bar of the highest court of the state or the District of Columbia where the applicant regularly practices law;
- (4) whether the applicant is currently suspended or disbarred in any court, and if so, a description of the circumstances under which the suspension or disbarment occurred;
- (5) whether the applicant has been formally notified of any complaints pending before a disciplinary agency in any jurisdiction and, if so, provide a detailed description of the nature and status of any pending disciplinary complaints;
- (6) an identification of all law firms with which the applicant is associated and a description of all the applicant's pending *pro hac vice* appearances in South Carolina to include the name and address of the tribunal;

(7) the names of each case in South Carolina in which the applicant has filed an application to appear as counsel *pro hac vice*, the name and address of the tribunal, the date of each application, and whether it was granted;

(8) the name, address, and telephone number of the active member(s) of the South Carolina Bar who is (are) the attorney(s) of record; and

(9) an affirmation that the applicant will comply with the applicable statutes, law and procedural rules of the State of South Carolina; be familiar with and comply with the South Carolina Rules of Professional Conduct; and submit to the jurisdiction of the South Carolina courts and the South Carolina disciplinary process.

The tribunal in its discretion may order a hearing on the application and shall enter an order granting or refusing the application. If the application is refused, the tribunal shall state its reasons.

(d) Fee; Record of Appearances Pro Hac Vice. Each time an Application for Admission Pro Hac Vice under this rule is made, the attorney seeking to appear *pro hac vice* shall provide a copy of the application to the South Carolina Supreme Court Office of Bar Admissions accompanied by a \$250 fee. Upon receipt of the application, the Clerk of the South Carolina Supreme Court shall certify to the tribunal in which a *pro hac vice* appearance has been requested that the fee has been received. The Office of Bar Admissions shall maintain a record of all *pro hac vice* applications as a public record.

(e) Conduct of Attorney Appearing Pro Hac Vice. An attorney appearing *pro hac vice* is subject to the jurisdiction of the South Carolina courts with respect to South Carolina law governing the conduct of attorneys to the same extent as an attorney admitted to practice in the courts of this state. The attorney shall comply with the South Carolina Rules of Professional Conduct and is subject to the disciplinary jurisdiction of the Supreme Court of South Carolina. The tribunal in which an attorney is appearing *pro hac vice* or the Supreme Court of South Carolina may, for violations of South Carolina law, the South Carolina Rules of Professional Conduct, or orders of the court, withdraw its permission for an attorney to appear *pro hac vice*.

(f) Responsibilities of Attorney of Record for Attorney Appearing Pro Hac Vice. The South Carolina attorney of record shall at all times be prepared to go forward with the case; sign all papers subsequently filed; and attend all subsequent proceedings in the matter, unless the tribunal specifically excuses the South Carolina attorney of record from attendance.

(g) Non-South Carolina Lawyers Appearing in an Arbitration, Mediation or Other Alternative Dispute Resolution Proceeding in South Carolina. Pursuant to Rule 5.5(c)(3) of the Rules of Professional Conduct, Rule 407, SCACR, a lawyer admitted to practice law in another jurisdiction may perform legal services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of

or are reasonably related to the lawyer's pre-existing representation of a client in a jurisdiction in which the lawyer is admitted to practice.

(h) Limitations on Provision of Legal Services Pursuant to Rule 5.5(c)(3). A lawyer who is not admitted to practice in South Carolina who seeks to provide legal services pursuant to Rule 5.5(c)(3) in more than three matters in a 365-day period shall be presumed to be providing legal services on a regular, not temporary, basis.

(i) Fee; Record of Provision of Legal Services Pursuant to Rule 5.5(c)(3). For each matter in which a lawyer seeks to provide legal services pursuant to Rule 5.5(c)(3), the lawyer shall file a verified statement with the South Carolina Supreme Court Office of Bar Admissions stating that the lawyer has not filed more than three statements pursuant to this rule in a 365-day period. The statement shall be accompanied by a \$250 fee and shall be served on opposing counsel, if known. If opposing counsel is not known at the time the verified statement is filed, the statement shall be filed on opposing counsel within ten days of learning the identity of opposing counsel.