2014 WI 42

SUPREME COURT OF WISCONSIN

NOTICE
This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 13-11

In the matter of the petition for amendment to Supreme Court Rule 10.03(4)(b)2 relating to pro hac vice applications.

FILED

JUN 20, 2014

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

Pending before the court is a rule petition filed July 17, 2013, by the Board of Administrative Oversight and the Office of Lawyer Regulation (OLR) asking the court to amend Supreme Court Rule (SCR) 10.03(4)(b)2 to increase the fee for admission pro hac vice from fifty dollars ($50) to two-hundred dollars ($200).

Pursuant to the terms of the so-called "pro hac vice" rule, SCR 10.03(4), 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.

As relevant here, SCR 10.03(4)(b)2 currently provides that lawyers who seek admission pro hac vice shall pay a nonrefundable fee of $50 to the OLR for each application for admission pro hac vice. The petition proposes increasing the fee for admission pro hac vice to $200. The petitioners assert that the current fee is "well below

the national average" and contend that $200 is "commensurate with the national average." The petitioners attached a chart reflecting the fees charged in other states.

The court discussed the matter at open conference on September 12, 2013, and voted unanimously to solicit written comments and then discuss and potentially decide the matter at a future open conference without a public hearing.

The court sent the petitioners a letter seeking additional information to which the petitioners responded by letter dated December 6, 2013. In response to written questions from the court, the OLR provided detailed information about the number of pro hac vice admissions. The OLR acknowledged that the present $50 fee is adequate to cover OLR's current administrative expenses for administering the pro hac vice rule. However, the OLR notes that it has not been fully funded over the past five years and explains that the fees requested will help alleviate funding pressures.

The court also asked the OLR, in writing, if the form application for admission pro hac vice located in Appendix A to SCR Ch. 10 should be amended to add the "Wisconsin Supreme Court" in paragraph (7). The OLR agrees that this amendment is appropriate.

In response to the court's letter to interested parties sent on November 11, 2013, the Honorable Eugene Gasiorkiewicz submitted an email briefly stating that he supports the petition. The State Bar of Wisconsin filed a letter dated January 7, 2014, supporting the fee increase. The Wisconsin Trust Account Foundation (WisTAF) filed a letter dated January 10, 2014, asking for a $350 increase "with all funds in excess of the $200 requested by OLR to be designated for

low-income and indigent civil legal services." The petitioners filed a response opposing this request dated January 30, 2014. On April 25, 2014, the Wisconsin Access to Justice Commission (WATJ) filed a letter supporting WisTAF's request to raise the fee and asking the court to dedicate $25 per application to WATJ.

The court discussed this matter at an open rules conference on May 27, 2014. Court staff advised the court that a document addressing common questions about the process for admission pro hac vice in Wisconsin is available on the OLR website and will be updated by the OLR after the court decides this petition. Justice N. Patrick Crooks noted that frequently at bar admissions ceremonies, out-of-state lawyers are admitted to the Wisconsin Supreme Court pro hac vice solely for purpose of moving the admission of an individual to the bar. Justice Crooks clarified, and the entire court agreed, that the fee at issue is not imposed in such cases.

The court discussed whether to conduct a public hearing on this petition. The court voted 4-3[1] to decide the matter without a public hearing. The court then discussed the petition and the proposal to allocate some of the fee increase to WisTAF or WATJ to help support provision of civil legal services to low-income and indigent persons. The court acknowledged the importance of supporting programs that improve access to civil legal services for unrepresented low-income Wisconsin residents. After some discussion, Justice Michael J.

[1] Justices N. Patrick Crooks, Patience Drake Roggensack, Annette Kingsland Ziegler, and Michael J. Gableman voted in favor of the motion to decide the petition without a public hearing. Chief Justice Shirley S. Abrahamson and Justices Ann Walsh Bradley and David T. Prosser would have conducted a public hearing.

Gableman moved the court to adopt the petition, as amended, and raise the fee for admission pro hac vice from $50 to $250 to be allocated as follows: $100 to the OLR, $100 to WisTAF, and $50 to WATJ. Justice Patience Drake Roggensack seconded the motion. The court voted 5:2 to approve the petition, as amended.[2]

IT IS ORDERED that 10.03 (4) (b) 2 of the Supreme Court Rules is amended as follows:

SCR 10.03 **(4)** (b) 2. Counsel who seek to provide legal services under SCR 10.03(4)(b) shall pay a nonrefundable fee of ~~fifty~~ two-hundred and fifty dollars ($~~50~~250) 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.

IT IS FURTHER ORDERED that the Office of Lawyer Regulation is directed to allocate the fee established in SCR 10.03 (4) (b) 2 as follows: $100 to the Office of Lawyer Regulation, $100 to Wisconsin Trust Account Foundation, Inc., and $50 to the Wisconsin Access to Justice Commission.

IT IS FURTHER ORDERED that a Wisconsin Comment to Supreme Court Rule 10.03 (4) (b) 2 is created to read:

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[2] Justices N. Patrick Crooks, Patience Drake Roggensack, David T. Prosser, Annette Kingsland Ziegler, and Michael J. Gableman voted in favor of the motion.

Wisconsin Comment

The Wisconsin Supreme Court has directed the Office of Lawyer Regulation to allocate the fee established in SCR 10.03(4)(b)2 as follows: $100 to the Office of Lawyer Regulation, $100 to Wisconsin Trust Account Foundation, Inc., and $50 to the Wisconsin Access to Justice Commission. See S. Ct. Order 13-11, 2014 WI 42 (issued Jun. 20, 2014, eff. Jul. 1, 2014) (Abrahamson, C.J. and Bradley, J., dissenting).

IT IS FURTHER ORDERED that the comment to SCR 10.03 (4) (b) 2 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that the Records Management Committee is directed to amend the form application for admission pro hac vice located in Appendix A to SCR Chapter 10 to add the "Wisconsin Supreme Court" in paragraph (7).

IT IS FURTHER ORDERED that the effective date of this order is July 1, 2014.

IT IS FURTHER ORDERED that the amendment adopted pursuant to this order shall apply to proceedings commenced after the effective date of this rule and, insofar as is just and practicable, proceedings pending on the effective date.

IT IS FURTHER ORDERED that notice of this amendment of SCR 10.03 (4) (b) 2 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, by the State Bar of Wisconsin, and on the Wisconsin court system's web site.

Dated at Madison, Wisconsin, this 20th day of June, 2014.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, C.J. *(dissenting).* I am pleased with the result making funds available to the Access to Justice Commission and the Wisconsin Trust Account Foundation to be used for providing counsel to indigent litigants in civil cases who cannot afford counsel. Nevertheless, I cannot join this order.

¶2 As I have said and written numerous times, there are hundreds of thousands of people in the State of Wisconsin who face serious legal issues and cannot afford legal representation.[3] The court, as well as the State Bar and the State government, must act to provide counsel to indigent civil litigants to achieve our society's promise of equal justice under law.

¶3 The court is now imposing the obligation to support counsel for indigent litigants in civil cases on out-of-state lawyers and their in-state clients.

¶4 The rule adopted today varies significantly from the rule the OLR proposed. The court should have had a hearing on its sua sponte amended petition. This process would have given the court a better sense of the number of litigants and their out-of-state lawyers that this rule affects, the amount of money that will be collected, and the appropriate allocation of pro hac vice fees to achieve the goal of more funds for indigent civil litigants who want legal representation.

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[3] Access to Justice Study Committee, State Bar of Wisconsin, Bridging the Justice Gap: Wisconsin's Unmet Legal Needs (2007).

¶5 I am authorized to state that Justice ANN WALSH BRADLEY joins this dissent.