

Tuesday

28th

November, 2006.

On November 10, 2005 came the Virginia State Bar, by Phillip V. Anderson, its President, and Thomas A. Edmonds, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Rule 1A:4 of the Rules of the Supreme Court of Virginia be amended. The petition is approved, as modified by the Court, and the rule is amended to become effective February 1, 2007.

Amend Rule 1A:4 to read as follows:

**Rule 1A:4. Out-of-State Lawyers - When Allowed to Participate in a Case *Pro Hac Vice*.**

**1. Introduction.** A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel *pro hac vice* in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the Commonwealth of Virginia upon compliance with this rule.

**2. Association of Local Counsel.** No out-of-state lawyer may appear *pro hac vice* before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called "local counsel"). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. Local counsel associating with an out-of-state lawyer in a particular case shall accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal

in that particular case. Any pleading or other paper required to be served (whether relating to discovery or otherwise) shall be invalid unless it is signed by local counsel. The tribunal in which such case is pending shall have full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel shall be deemed valid as if served on the out-of-state lawyer.

**3. Procedure for applying.** Appearance *pro hac vice* in a case is subject to the discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear *pro hac vice* under this rule shall comply with the procedures set forth herein for each case in which *pro hac vice* status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear *pro hac vice* on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal shall specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary *pro hac vice* admission shall be revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.

(a) *Notarized Application.* In order to appear *pro hac vice* as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal an original notarized application and a non-refundable application fee of \$250.00 payable to the Clerk of the Supreme Court. *Pro hac vice* counsel must submit a notarized application with the non-refundable application fee of \$250.00 for each separate case before a tribunal. The fee shall be paid to the Clerk of the Supreme Court of Virginia. The tribunal shall file a

copy of the notarized application, as well as its order granting *pro hac vice* admission in the case and the \$250.00 fee, with the Clerk of the Supreme Court of Virginia. Original, notarized applications and orders granting, denying or revoking applications to appear *pro hac vice* shall be retained in a separate file containing all applications. The clerk of the tribunal shall maintain the application for a period of three years after completion of the case and all appeals.

(b) *Motion to associate counsel pro hac vice.* Local counsel shall file a motion to associate the out-of-state lawyer as counsel *pro hac vice* with the tribunal where the case is pending, together with proof of service on all parties in accordance with the Rules of the Supreme Court of Virginia. The motion of local counsel shall be accompanied by: (1) the original, notarized application of the out-of-state lawyer; (2) a proposed order granting or denying the motion; and (3) the required application fee.

(c) *Entry of Order.* The order granting or denying the motion to associate counsel *pro hac vice* shall be entered by the tribunal promptly and a copy of the order shall be forwarded to the Clerk of the Supreme Court. An out-of-state lawyer shall make no appearance in a case until the tribunal where the case is pending enters the order granting the motion to associate counsel *pro hac vice* unless temporary admission has been approved pursuant to this rule. The order granting *pro hac vice* status shall be valid until the case is concluded in the courts of this Commonwealth or a court revokes the *pro hac vice* admission.

**4. Notarized Application.** The notarized application required by this rule shall be on a form approved by the Supreme Court of Virginia and available at the office of the clerk of the tribunal where the case is pending.

**5. Discretion and Limitation on Number of Matters.** The grant

or denial of a motion pursuant to this rule by the tribunal is discretionary. The tribunal shall deny the motion if the out-of-state lawyer has been previously admitted *pro hac vice* before any tribunal or tribunals in Virginia in twelve (12) cases within the last twelve (12) months preceding the date of the current application. In the enforcement of this limitation, the tribunal may consider whether the pending case is a related or consolidated matter for which the out-of-state lawyer has previously applied to appear *pro hac vice*. Before ruling on a *pro hac vice* motion, the tribunal shall verify with the Supreme Court of Virginia the number of cases during the preceding twelve (12) months in which the out-of-state lawyer was admitted in Virginia *pro hac vice*.

**6. Transfer of Venue and Appeal.** The out-of-state lawyer's *pro hac vice* admission shall be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal or is appealed; provided, however, that the tribunal having jurisdiction over such transferred or appealed case shall have the discretion to revoke the authority of the out-of-state lawyer to appear *pro hac vice*.

**7. Duty to Report Status.** An out-of-state lawyer admitted *pro hac vice* shall have a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal shall advise the Clerk of the Supreme Court of Virginia if the tribunal denies or revokes the out-of-state lawyer's permission to appear *pro hac vice*.

**8. Record-keeping.** The Clerk of the Supreme Court of Virginia will maintain an electronic database necessary for the administration and enforcement of this rule.

**9. Disciplinary Jurisdiction of the Virginia State Bar.** An

out-of-state lawyer admitted *pro hac vice* pursuant to this rule shall be subject to the jurisdiction of all tribunals and agencies of the Commonwealth of Virginia, and the Virginia State Bar, with respect to the laws and rules of Virginia governing the conduct and discipline of out-of-state lawyers to the same extent as an active member of the Virginia State Bar. An applicant or out-of-state lawyer admitted *pro hac vice* may be disciplined in the same manner as a member of the Virginia State Bar.

**10. In-State Services Related to Out-of-State Proceedings.**

Subject to the requirements and limitations of Rule 5.5 of the Virginia Rules of Professional Conduct, an out-of-state lawyer may provide the following services without the entry of a *pro hac vice* order:

(a) In connection with a proceeding pending outside of Virginia, an out-of-state lawyer admitted to appear in that proceeding may render legal services in Virginia pertaining to or in aid of such proceeding.

(b) In connection with a case in which an out-of-state lawyer reasonably believes he is eligible for admission *pro hac vice* under this rule: (1) the out-of-state lawyer may consult in Virginia with a member of the Virginia State Bar concerning a pending or potential proceeding in Virginia; (2) the out-of-state lawyer may, at the request of a person in Virginia contemplating or involved in a proceeding in Virginia, consult with that person about that person's retention of the out-of-state lawyer in connection with that proceeding; and (3) on behalf of a client residing in Virginia or elsewhere, the out-of-state lawyer may render legal services in Virginia in preparation for a potential case to be filed in Virginia.

(c) An out-of-state lawyer may render legal services to prepare for and participate in an ADR process, regardless of

where the ADR process or proceeding is expected to take place or actually takes place.

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JUSTICE KINSER dissents.

Add Appendix of Forms, Form 1 to Part One A as follows:

**APPENDIX OF FORMS.**

**1. APPLICATION TO APPEAR *PRO HAC VICE* BEFORE A VIRGINIA TRIBUNAL**

I, ..... , the  
NAME OF APPLICANT

undersigned attorney, hereby apply to this tribunal of the Commonwealth of Virginia,

..... , to appear as counsel  
NAME OF TRIBUNAL  
*pro hac vice* pursuant to Rule 1A:4 of the Rules of the Supreme Court of Virginia.

I further state the following:

1. The case in which I seek to appear *pro hac vice* is styled

..... , has  
docket number ..... and is pending in .....

This case [ ] is [ ] is not a related or consolidated matter for which I have previously  
applied to appear *pro hac vice*.

[ ] I have previously applied to appear *pro hac vice* in the following related or  
consolidated matters:

a. ....  
DOCKET NUMBER COURT NAME DATE OF PRO HAC  
VICE APPLICATION  
.....  
STYLE OF RELATED OR CONSOLIDATED MATTER

b. ....  
DOCKET NUMBER COURT NAME DATE OF PRO HAC  
VICE APPLICATION  
.....  
STYLE OF RELATED OR CONSOLIDATED MATTER

[ ] Additional Sheet attached.

2. ....  
APPLICANT'S RESIDENCE ADDRESS

.....  
APPLICANT'S OFFICE ADDRESS

3. ....  
NAME OF LOCAL COUNSEL VSB NUMBER

.....  
STREET ADDRESS

.....

.....  
FAX NUMBER EMAIL ADDRESS TELEPHONE NUMBER

4. ....  
NAME OF PARTY TO CASE

.....  
NAME AND ADDRESS OF COUNSEL FOR PARTY

.....  
NAME OF PARTY TO CASE

.....  
NAME AND ADDRESS OF COUNSEL FOR PARTY

.....  
NAME OF PARTY TO CASE

.....  
NAME AND ADDRESS OF COUNSEL FOR PARTY

Additional sheet attached.

5. ....  
COURT TO WHICH APPLICANT IS ADMITTED DATE OF ADMISSION BAR #

.....  
COURT TO WHICH APPLICANT IS ADMITTED DATE OF ADMISSION BAR #

Additional sheet attached.



6. I am a member in good standing and authorized to appear in the courts identified in paragraph 5.
7. I am not currently disbarred or suspended in any state, territory, United States possession or tribunal.
8. I  am not  am subject to a pending disciplinary investigation or proceeding by any court, agency or organization authorized to discipline me as a lawyer. (If such an investigation or proceeding is pending, attach to this application and incorporate by reference a statement specifying the jurisdiction, the nature of the matter under investigation or being prosecuted, and the name and address of the disciplinary authority investigating or prosecuting the matter.)
9. Within the past three (3) years, I  have not  have been disciplined by any court, agency or organization authorized to discipline me as a lawyer. (If so, attach to this application and incorporate by reference a statement specifying the name of the court, agency or organization imposing discipline, the date(s) of such discipline, the nature of the complaint or charge on which discipline was imposed, and the sanction.)
10. Within the last twelve (12) months preceding this application, I  have not  have sought admission *pro hac vice* under this rule. (If so, attach to this application and incorporate by reference a copy of the order of the tribunal granting or denying your previous application. Such order(s) must include the name of the tribunal, the style of case and the docket number for the case(s) in

which you filed an application and whether the application was granted or denied.)

Order(s) attached and incorporated by reference.

11. I hereby consent to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and of the Virginia State Bar and I further consent to service of process at any address(es) required by this Rule.

12. I agree to review and comply with appropriate rules of procedure as required in the case for which I am applying to appear *pro hac vice*.

13. I understand and I agree to comply with the rules and standards of professional conduct required of members of the Virginia State Bar.

.....

DATE

SIGNATURE OF APPLICANT

Commonwealth/State of .....

City  County of .....

Subscribed and sworn to/affirmed before me on this date by the above-named person.

.....

DATE

NOTARY PUBLIC

My commission expires: .....

A Copy,

Teste:

Clerk