

Dismissal of Actions Filed by Counsel Not Currently Licensed To Practice Law in Virginia

June 2010

Revised Draft Rule Published for Comment

Set forth below is a revised draft rule prepared by the Advisory Committee on Rules of Court. The revised draft below has been approved by the Advisory Committee. This revised draft has not been submitted to, considered, or approved by the Judicial Council of Virginia or the Supreme Court of Virginia. Comments are solicited on this revised draft.

Background: In 2008 the Boyd-Graves Conference on Virginia Practice and Procedure studied the issues raised in the rulings by the Supreme Court of Virginia in *Neary v. Adu-Gyamfi*, 270 Va. 28, 613 S.E. 2d 429 (2005) and by the Court of Appeals in *Jones v. Jones*, 49 Va. App. 31, 635 S.E. 2d 694 (2006). In the first case the Supreme Court invalidated a judgment obtained by the plaintiff in a suit for injuries sustained in an automobile accident. The plaintiff had previously filed suit and that suit had been nonsuited. The nonsuit had been entered in a case in which their then attorney had filed the motion for judgment when his license to practice law had been administratively suspended. The Court found the filing a nullity since the attorney was not validly licensed when filing the motion for judgment. In *Jones v. Jones* the Court of Appeals considered an appeal on behalf of a party who filed a notice of appeal by her attorney whose license was suspended at the time the notice was filed and dismissed the appeal because the notice was a nullity. Other decisions on this theme include *Kone v. Wilson*, 272 Va. 59, 62, 630 S.E. 2d 744, 745 (2006) and *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 283, 568 S.E. 2d 671, 673 (2002).

Responding to the Boyd-Graves Conference proposal, and published comments by a member of the judiciary that the invalidity of such filings is not embodied in any statute or Rule of Court and produces harsh consequences in these circumstances, the Advisory Committee on Rules of Court published several proposed formulations of a Rule addressing these issues.

At its May, 2010 meeting the Advisory Committee resolved to recommend to the Judicial Council approval of the following narrowly drawn addition to Rule 3:2, which addresses the commencement of civil actions. The new language is underscored:

Rule 3:2. Commencement of Civil Actions.

(a) *Commencement.* (i) A civil action shall be commenced by filing a complaint in the clerk's office. When a statute or established practice requires, a proceeding may be commenced by a pleading styled "Petition." Upon filing of the pleading, the action is then instituted and pending as to all parties defendant

thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

(ii) Filing by Attorney Not Authorized to Practice in Virginia. If a complaint commencing a civil action has been filed on behalf of a client by an attorney whose license to practice law in Virginia is suspended at the time of the filing, by a person who has not been admitted to practice in Virginia, or by an attorney from another jurisdiction who has not been granted pro hac vice admission in Virginia pursuant to Rule 1A:4, the action may be dismissed without prejudice on the motion of any party or by the court on its own motion, and the statute of limitations for commencing another suit upon such claims by an attorney authorized to practice law in Virginia, or by the plaintiff pro se, shall be computed as provided in Virginia Code § 8.01-229(E)(1).

The goal of this amendment is to alert litigants to the dismissal consequences that will flow from the filing of a complaint by any person not currently authorized to practice law in Virginia, by including express provision within the Rules of Court, and locating that warning in the provisions of Rule 3:2 which specifically addresses commencement of a civil action.

The amendment does not alter the effect or application of any of the prior decisions of the Supreme Court or Court of Appeals.

Comments on the above draft revision should be sent by August 20, 2010 to:

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