

Parvis v Rakower Law PLLC
2019 NY Slip Op 31885(U)
June 27, 2019
Supreme Court, New York County
Docket Number: 656102/2017
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN **PART** **IAS MOTION 33EFM**

Justice

-----X **INDEX NO.** 656102/2017

MELISSA PARVIS

Plaintiff,

MOTION DATE N/A,
05/24/2019

- v -

MOTION SEQ. NO. 002 003

RAKOWER LAW PLLC,

Defendant.

**DECISION + ORDER ON
MOTIONS**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for

DISQUALIFY COUNSEL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 109, 110

were read on this motion to/for

PRO HAC VICE

Upon the foregoing documents, Motion Sequence 2 is denied; Motion Sequence 3 is granted.

In an underlying attorney fee dispute, Plaintiff retained James R. Hubbard, Esq., ("Hubbard") and James W. Halter, Esq., ("Halter") of Liddle & Robinson, a firm in New York City, to represent her. Both Hubbard and Halter commenced the underlying action in Supreme Court, New York County in September 2017. In 2018, Hubbard withdrew his partnership from Liddle & Robinson and relocated to North Carolina. On April 16, 2019, Hubbard filed a substitution of counsel (NYCSEF #63) in place of Liddle & Robinson for Plaintiff. On April 17, 2019, Halter, who also withdrew from Liddle & Robinson, filed a notice of appearance on Plaintiff's case. Both Hubbard and Halter represent Plaintiff. Defendant moves in Motion Sequence (MS) 2 to disqualify Hubbard for violation of Judiciary Law § 470¹. In MS 3, Hubbard seeks *pro hac vice* admission to practice in New York on this case, with Halter as his sponsor and Plaintiff's attorney of record.

This is the second attempt by Defendant to disqualify Hubbard. The first attempt was based on Defendant's assertion that Hubbard may be a witness because of Hubbard's alleged knowledge of the fee arrangement between Defendant and Plaintiff; the motion was denied (NYSCEF # 56 – Decision and Order of this

¹ Defendant withdrew the branch of its motion to disqualify James W. Halter, Esq., who retains an office in New York City.

court dated March 11, 2019). Defendant now argues that Hubbard should be disqualified because he is in violation of Judiciary Law §470 for practicing in New York State without maintaining an office within the state. Defendant adds that since Hubbard did not comply with the law office requirement of Judiciary Law §470, he cannot practice law in New York, either permanently or on an occasional basis through *pro hac vice* process, and is nonetheless barred from *pro hac vice* admission because of Hubbard's concealment of his Judiciary Law §470 violation through misstatements to the court and Defendant.

The alleged misstatements² are Hubbard's appearance at a preliminary conference on April 3, 2019, and entering into a discovery stipulation on April 12, 2019. Defendant claims that these misstatements left an impression that Hubbard was affiliated with Liddle & Robinson when in fact he had left Liddle & Robinson in 2018. Defendant notes that Hubbard's substitution of counsel notice was dated March 13, 2019, but filed only on April 16, 2019. Defendant argues that disqualifying Hubbard and denying Hubbard's *pro hac vice* application in MS 3 would not prejudice Plaintiff because she would still be represented by Halter, who was also her counsel since the beginning of the action.

Plaintiff denies that Hubbard violated Judiciary Law § 470. Hubbard, who is admitted to practice law in New York for over a decade, was a partner at the New York law firm of Liddle & Robinson and had maintained an office there when he commenced the instant action against Defendant and up to and including addressing Defendant's first motion to disqualify him in MS 1. In the alternative, plaintiff submits that Hubbard should be directed to file a *pro hac vice* application. Plaintiff urges granting the *pro hac vice* application because Hubbard had represented her since the beginning of the action, and the loss of his knowledge would place her at a significant disadvantage.

DISCUSSION

On the claim that Hubbard violated Judiciary Law § 470, Defendant does not argue that Hubbard was in violation when the action commenced or when the first motion sequence was fully submitted in February 2018. The purported misstatements are Hubbard's appearance as counsel for Liddle & Robinson at the April 2019 preliminary conference, and the subsequent discovery stipulation that Hubbard signed while of counsel to Liddle & Robinson. Defendant notes that Hubbard had relocated to North Carolina in 2018, and did not file the Substitution of Counsel until April 16, 2019. However, the misstatements, as branded by Defendant, which is Hubbard's representation as counsel, or of counsel to Liddle & Robinson in 2018, is unsubstantiated. The violation, if any, is slight, and can be cured by an application for *pro hac vice* admission by appropriate counsel (*see*

² Defendant's reply (NYSCEF # 105) introduces an inadmissible conversation between defendant and Mr. Liddle regarding Hubbard's affiliation with the firm. However, the conversation is not considered as it is inadmissible.

Arrowhead Capital Finance, Ltd. v Cheyne Specialty Finance Fund L.P., 32 NY3d 645, 650 [2019]).

Pro hac vice eligibility requirements and application process are governed by Section 520.11 of the Rules of the Court of Appeals (22 NYCRR 520.11). Plaintiff must show that Hubbard complied with these requirements and that the alleged violation of Judiciary Law §470 does not prohibit Hubbard from seeking *pro hac vice* admission. “An attorney and counselor-at-law or the equivalent who is a member in good standing of the bar of another state, territory, district or foreign country may be admitted *pro hac vice* ...” in certain circumstances (22 NYCRR § 520.11). For a lawyer to be admitted *pro hac vice*, the applicant must be associated with an attorney who is a member in good standing of the New York Bar and who will act as the attorney of record in the matter (22 NYCRR § 520.11[c]). The visiting attorney must also be familiar with and comply with the standards of professional conduct imposed on New York lawyers. The visiting attorney must produce current certificates of good standing from each jurisdiction in which the applicant is admitted and any orders of the courts below granting such relief in the matter for which *pro hac vice* status is sought (22 NYCRR § 520.11[d] and § 500.4). The court then has discretion to grant or deny the motion, but New York State's policy usually favors “representation by counsel of one own's choosing” (*Perkins v Elbilia*, 90 AD3d 543 [2011] quoting *Neal v Ecolab Inc.*, 252 AD2d 716, 716 [1998]).

Hubbard is a member in good standing in the states of North Carolina and New York. Hubbard produced all the documents required by the applicable statutes, including Certificates of Good Standing of North Carolina and New York states bars. Hubbard would be associated with Halter, an attorney who is a member in good standing with the New York Bar and who will act as the attorney of record. As such, Hubbard complies with the applicable status requirements.

Defendant argues that allowing a lawyer who does not comply with the law office requirement of Judiciary Law § 470 to apply for a *pro hac vice* admission would be inconsistent with *Arrowhead* (32 NY3d at 650). Defendant argues that “[i]f lawyers could cure their own abuses of Judiciary Law § 470 simply by filing a *pro hac vice* motion, there would be no consequence for their violation of the statute” (NYSCEF # 104, at 5). Defendant finds support for its argument in *Arrowhead* – “the individual attorney may face disciplinary action for failure to comply with the statute” (*Arrowhead*, 32 NY3d at 650). Defendant deduces from *Arrowhead* that “[t]he law is clear: an attorney who practice law in violation of Judiciary Law § 470 may not be admitted *pro hac vice*” (NYSCEF # 104, at 5). Hence, Defendant advocates barring Plaintiff's *pro hac vice* application for Hubbard's admission.

Defendant's interpretation of *Arrowhead* does not consider that a “trial court has discretion to consider any resulting prejudice and fashion an appropriate remedy and the individual attorney may face disciplinary action for failure to

comply with the statute” (*Arrowhead*, 32 NY3d at 650). As the Court of Appeals explains, “[t]his approach ensures that violations are appropriately addressed without disproportionately punishing an unwitting client for an attorney’s failure to comply with § 470” (*id.*). Thus, *Arrowhead* allows courts to “fashion an appropriate remedy” (*id.*), which could include the sanction Defendant champions for its motion – barring Hubbard’s *pro hac vice* admission. But, the facts in this case do not warrant adopting Defendant’s interpretation of *Arrowhead* or punishing Plaintiff and Hubbard by barring Hubbard’s *pro hac vice* admission.

Here, Hubbard was Plaintiff’s lawyer at the inception of the case in 2017 before moving to North Carolina in 2018. Hubbard appeared in the case on behalf of Liddle & Robinson until mid-April 2019 (NYSCEF # 110, ¶ 6). Liddle & Robinson remained the attorney of record on plaintiff’s case until April 16, 2019, when Hubbard filed a Substitution of Counsel with the court. The fact is that plaintiff’s file ended up with Hubbard and Halter, the two attorneys who started the case. This indicates Plaintiff’s ultimate choice of attorneys. The *pro hac vice* application was filed on May 8, 2019, twenty-three days after the April 16 Substitution of Counsel was filed. The delay is minimal and is not indicative of Hubbard’s malicious intent to violate Judiciary Law § 470. The short delay in the applying for *pro hac vice* admission did not adversely affect the case, the Defendant, or the court (*see Perkins*, 90 AD3d at 544). And there is no prejudice to Defendant. Defendant’s counsel had been working on this matter with the knowledge of Hubbard’s relocation and even accommodated Hubbard’s relocation by offering to accept service by email (NYSCEF # 70 at 5; # 81).

Defendant argues that allowing a lawyer who does not comply with the office requirement of Judiciary Law § 470 to apply for a *pro hac vice* admission would create a nonauthorized exception to § 470. However, Hubbard’s situation here is not one where Judiciary Law § 470 aims to prevent -- lawyers who want to practice in New York on a continuous basis without first seeking authorization. Hubbard commenced plaintiff’s case and had been involved in all aspects of the case. Further, his association with the in-state attorney is Halter, who had worked on the case with Hubbard since the commencement of the case. Hence, the *pro hac vice* application is specific to this case.

Defendant contends that Hubbard is not eligible to *pro hac vice* admission because § 520.11 concerns only attorneys who are members “of the bar of another state, territory, district or foreign country” which excludes New York licensed lawyers (22 NYCRR § 520.11). Nowhere in § 520.11 is there language that specifically excludes New York State admitted attorneys who are also members of another state bar. Hubbard is admitted to practice law in North Carolina. As such, he is a member of a bar of another state, which Defendant cannot contest the application of § 520.11. Defendant’s argument, on the one hand, dispenses with the *pro hac vice* admission because Hubbard is admitted to practice in New York State;

and on the other hand, will have Hubbard disqualified because Hubbard does not maintain an office in New York. Limiting the application of § 520.11 to exclude non-resident New York State admitted attorneys is counter to the policy favoring "representation by counsel of one's own choosing" (*Neal*, 252 AD2d at 716). Plaintiff's application for *pro hac vice* admission is granted.

Accordingly, it is ORDERED that defendant Rakower Law PLLC's motion to disqualify James R. Hubbard, Esq. from plaintiff's case is denied; it is further

ORDERED that plaintiff Melissa Parvis' motion for James R. Hubbard, Esq. to be admitted *pro hac vice* pursuant to 22 NYCRR § 520.11 is granted in this matter; it is further

ORDERED that James R. Hubbard, Esq. shall be associated at all times during this action with James W. Halter, Esq., who is a member in good standing of the Bar of the State of New York and is attorney of record for Melissa Parvis; it is further

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be responsible for such papers and for the conduct of this action; it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney, James R. Hubbard, Esq., hereby admitted *pro hac vice*, shall be familiar with and abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; it is further

ORDERED that James R. Hubbard, Esq. shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of her participation in this matter; and it is further

ORDERED that James R. Hubbard, Esq. shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his standing as a member of the bar.

6/27/2019

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

☐ DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:


 MARGARET A. CHAN, J.S.C.