

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV000809-100

IN RE ASHEVILLE EYE
ASSOCIATES DATA INCIDENT
LITIG.

ORDER

THIS MATTER is before the Court on the Court’s *sua sponte* reconsideration of its prior Order granting Andrew J. Shamis admission *pro hac vice* in this litigation (“Motion for Reconsideration” or the “Motion”). Having considered all appropriate matters of record, the Court **CONCLUDES** that Shamis’s *pro hac vice* status should be revoked for the reasons set forth below and that he should be barred from practicing in the courts of North Carolina for a period of one year.

FINDINGS OF FACT

1. Plaintiff Dena Brito initiated one of the underlying lawsuits comprising this consolidated action—captioned *Brito v. Asheville Eye Assocs., PLLC*—by filing a Complaint in Buncombe County Superior Court on 7 February 2025 asserting various claims for monetary relief against Defendant Asheville Eye Associates, PLLC. (*See Brito v. Asheville Eye Assocs., PLLC*, Buncombe Cnty. Super. Ct. File No. 25CV000859-100, ECF No. 3.)

2. The *Brito* Complaint was electronically signed by North Carolina attorney Scott C. Harris of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC and listed two Florida attorneys as additional counsel with the denotation “*Pro*

Hac Vice forthcoming”—Shamis and Leanna A. Loginov of the law firm Shamis & Gentile, P.A.

3. On 16 April 2025, in an unrelated case captioned *In re Carolina Arthritis Assocs. Data Incident Litig.*—which is currently pending in this Court before the Honorable Michael L. Robinson—Shamis and Harris filed a Motion for Shamis to Appear *Pro Hac Vice* (the “*Arthritis Associates PHV Motion*”). (See *In re Carolina Arthritis Assocs. Data Incident Litig.*, New Hanover Cnty. Super. Ct. File No. 25CV002250-640, ECF No. 7.)

4. The documents submitted to the Court in connection with the *Arthritis Associates PHV Motion* represented that Shamis is licensed in several jurisdictions, that he regularly practices in the State of Florida, and that he “ha[d] not been admitted practicing *pro hac vice* in North Carolina in State or Federal Court for the preceding five years.” (*Arthritis Assocs. Mot.* ¶¶ 1, 3.)

5. In addition, Shamis’s declaration stated that he regularly practices in the State of Colorado—not Florida. (See *In re Carolina Arthritis Assocs. Data Incident Litig.*, ECF No. 7.2.)

6. On 29 April 2025, Chief Judge Robinson scheduled a hearing on the *Arthritis Associates PHV Motion* to take place on 6 May 2025. (See *In re Carolina Arthritis Assocs. Data Incident Litig.*, ECF No. 22.)

7. On 5 May 2025, Shamis and Harris filed a Motion for Andrew Shamis to Appear *Pro Hac Vice* in the *Brito* action (the “*Brito PHV Motion*”). (See *Brito v. Asheville Eye Assocs., PLLC*, ECF No. 18.)

8. The *Brito* PHV Motion (including the supporting statements contained therein) represented that Shamis was licensed in a number of jurisdictions, that he regularly practices in the State of Florida, and that he “has not been admitted practicing *pro hac vice* in North Carolina in State or Federal Court for the preceding five years.” (*Brito* Mot. ¶¶ 1, 3.)

9. Although the *Brito* PHV Motion stated that Shamis’s Florida Bar number was 101754 (*Brito* Mot ¶ 1), Shamis’s supporting declaration stated that Shamis’s Florida Bar number was 76124 (ECF No. 18.2, ¶ 3).

10. On 6 May 2025—less than two hours before the scheduled hearing before Chief Judge Robinson on the *Arthritis Associates* PHV Motion—Shamis and Harris filed a “corrected” declaration in that case, whereby Shamis retracted his previous assertion that he is licensed and regularly practices in the State of Colorado. (See *In re Carolina Arthritis Assocs. Data Incident Litig.*, ECF No. 24.1.) No other corrections were made to his previously filed declaration or to any other statements contained in the *Arthritis Associates* PHV Motion.

11. Following the hearing, Chief Judge Robinson entered an Order on 9 May 2025 denying the *Arthritis Associates* PHV Motion (“*Arthritis Associates* Order”). (See *In re Carolina Arthritis Assocs. Data Incident Litig.*, ECF No. 27.)

12. In the *Arthritis Associates* Order, Chief Judge Robinson stated as follows:

[T]he Court [has] identified two substantial and concerning issues regarding Plaintiff’s submissions and particularly Mr. Shamis’s representations to the Court.

First, the Shamis Declaration, signed by Mr. Shamis under oath, represented as fact that he was then licensed to practice law in the State of Colorado. However, that representation is directly at odds with the Motion, also signed by Mr. Shamis, which represents that Mr. Shamis is “currently licensed to practice law” in Florida, New York, Arizona, Georgia, Texas, Ohio, Illinois, Missouri, and Washington—but not in Colorado). As a result of this inconsistency in Mr. Shamis’s representations to the Court, the Court reviewed the State of Colorado’s Office of Attorney Regulation Counsel’s website, where the Court was unable to find evidence that Mr. Shamis is licensed to practice law in that State.

...

At the Hearing, the Court questioned Mr. Shamis about the filings provided to the Court in connection with Plaintiff’s request that he be admitted *pro hac vice* to represent Plaintiffs in this action. Mr. Shamis confirmed that both the Motion and the Shamis Declaration were signed by him after he read them. When asked why he signed a document with a misrepresentation as to his state of licensure to practice law, Mr. Shamis said it was the result of a “scrivener’s error.”

...

Equally if not more troubling to the Court, in paragraph 3 of the Motion, Mr. Shamis represented to the Court that he had not been admitted *pro hac vice* to appear in a North Carolina court in the preceding five years. During the Hearing, the Court specifically asked Mr. Shamis if there were any statements in the Motion which were inaccurate, and he represented there were none. The public record demonstrates that, notwithstanding his representations to the Court to the contrary, Mr. Shamis has been admitted *pro hac vice* to represent clients in North Carolina Courts on two prior occasions in the last five years. See *Brandon Whitesides v. The Members Insurance Company* (20CVS975; Cleveland); *Adam Anderson v. Integon Preferred Insurance Company* (20CVS2035; Cabarrus).

...

Mr. Shamis’s affirmative misrepresentations to the Court in his two declarations paired with the misrepresentation in the Motion regarding his admission as *pro hac vice* counsel in prior North Carolina cases, are alarming to the Court. As such, the Court finds and concludes in its discretion that Mr. Shamis’ request to be admitted to appear as *pro hac*

vice counsel to represent Plaintiff Donna Johnson, or the class of Plaintiffs, in this action should be denied.

(Arthritis Assocs. Order, at 2–4.)

13. On that same date (9 May 2025), this Court entered an Order Granting Andrew Shamis Admission *Pro Hac Vice* (the “*Brito* PHV Order”) based on its findings that Shamis had satisfied the statutory requirements of N.C.G.S. § 84-4.1 that govern *pro hac vice* admission. (*Brito* PHV Order, at 1). The Court’s findings in the *Brito* PHV Order were based on this Court’s reliance on the accuracy of the representations made by Shamis and Harris in the *Brito* PHV Motion.

14. That same day, the Court entered an Order on Plaintiffs’ Unopposed Motion to Consolidate and Appoint Interim Class Counsel, which consolidated *Brito v. Asheville Eye Assocs., PLLC* along with four other related lawsuits into the above-captioned matter. (ECF No. 23.)

15. Despite the fact that Shamis knew (or should have known) that at least some of the false statements identified by Chief Judge Robinson in the *Arthritis Associates* Order were likewise contained in the *Brito* PHV Motion (and the supporting declaration), at no time following the issuance of Chief Judge Robinson’s *Arthritis Associates* Order did Shamis (1) notify this Court that said order had been issued; or (2) seek to correct any of the similar misstatements contained in the *Brito* PHV Motion.

16. Nearly three weeks later, the Court independently learned of the issuance of the *Arthritis Associates* Order. Accordingly, on 28 May 2025, the Court *sua sponte* noticed a hearing to take place on 9 June 2025 in order for the Court to

determine whether reconsideration of Shamis's *pro hac vice* status was warranted. (ECF No. 24.)

17. On 6 June 2025 (the Friday before the scheduled hearing), Shamis and Harris filed an Amended Motion for Shamis to Appear *Pro Hac Vice* ("Amended Brito Motion") and an Amended Statement of Andrew Shamis in Support of His Motion for Admission *Pro Hac Vice* ("Amended Shamis Declaration"). (See *Brito v. Asheville Eye Assocs., PLLC*, ECF Nos. 22, 22.2.)

18. In the Amended Brito Motion, Shamis and Harris reaffirmed that Shamis is licensed to practice in numerous jurisdictions, that he regularly practices in the State of Florida, and that his Florida Bar number is 101754. (Am. Brito Mot. ¶ 2.)

19. However, for the first time, Shamis and Harris disclosed that Shamis has been admitted to practice *pro hac vice* in at least five North Carolina state or federal cases within the past five years. (Am. Brito Mot. ¶ 4.) In addition to the two cases identified in the *Arthritis Associates* Order, Shamis has appeared in at least the following three other cases: *Leslie Smith et al. v. Peak Property and Casualty Insurance Corporation*, M.D.N.C. File No. 1:20-cv-00907; *Alicia McIver et al. v. Government Employees Insurance Company et al.*, M.D.N.C. File No. 1:20-000839; and *Tami Bruin v. Bank of America, N.A.*, W.D.N.C. File No. 3:22-cv-00140.

20. In addition to being the first filing in this Court acknowledging Shamis's prior history of *pro hac vice* admissions in North Carolina, the Amended Shamis

Declaration was also the first filing by Shamis and Harris that informed the Court of the denial of the *Arthritis Associates* PHV Motion. (See Am. Shamis Decl. ¶¶ 5–6, 9.)

21. Shamis and Harris further represented that they were unaware of the inaccuracies contained in the *Brito* PHV Motion at the time it was filed and that such misrepresentations were not made maliciously. (Am. Brito Mot. ¶ 1; Am. Shamis Decl. ¶ 4.)

22. The Court held a hearing on the Motion for Reconsideration on 9 June 2025 via Webex, which was attended by Shamis, Harris, and various other attorneys involved in this litigation.

23. Following the hearing, on 10 June 2025, Shamis and Harris filed a “Corrected” Amended Motion for Andrew Shamis to Appear *Pro Hac Vice*, which made no substantive corrections to the issues discussed above. (See *Brito v. Asheville Eye Assocs., PLLC*, ECF No. 24.) Rather, it corrected an administrative error where the declarations in support of the Amended *Brito* Motion were filed duplicatively. (Compare Am. Brito Mot. with ECF No. 22.)

24. The Motion is now ripe for resolution.

CONCLUSIONS OF LAW

BASED UPON the foregoing **FINDINGS OF FACT**, the Court makes the following **CONCLUSIONS OF LAW**:

25. Any Finding of Fact that is more appropriately deemed a Conclusion of Law, and any Conclusion of Law that is more appropriately deemed a Finding of Fact,

shall be so deemed and incorporated by reference as a Finding of Fact or Conclusion of Law, as appropriate.

26. It is well established that the authority to discipline lawyers rests within the Court's inherent authority. *See In re Nw. Bonding Co.*, 16 N.C. App. 272, 275 (1972) (noting that "[t]his power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, acts of dishonesty or impropriety"); *see also* N.C.G.S. § 84-36 (stating that "[n]othing contained in this Article [establishing the North Carolina State Bar] shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys").

27. "Summary judicial disciplinary action is appropriate when the attorney's dereliction occurs in a matter then pending before the court and where the facts underlying the dereliction are not in dispute." *In re Hunoval*, 294 N.C. 740, 744 (1977) (cleaned up). In such cases, the propriety of the sanctions imposed are within the trial court's discretion. *See Couch v. Priv. Diagnostic Clinic*, 146 N.C. App. 658, 665 (2001) (cleaned up) (noting that "the propriety of sanctions imposed for violation of . . . [court] rules" and "act[s] of the trial court in the exercise of its inherent authority" are reviewed for an abuse of discretion).

28. Likewise, it is well-established that the "admission of counsel in North Carolina *pro hac vice* is not a right[,] but a discretionary privilege." *Smith v. Beaufort Cnty. Hosp. Ass'n*, 141 N.C. App. 203, 209 (2000) (cleaned up), *aff'd per curiam*, 354 N.C. 212 (2001). Once granted, the privilege to practice *pro hac vice* "may be

summarily revoked by the General Court of Justice . . . on its own motion and in its discretion.” N.C.G.S. § 84-4.2; *see also Couch*, 146 N.C. App. at 663 (cleaned up) (noting that “a trial court’s revocation of an attorney’s ability to practice *pro hac vice* is reviewed under an abuse of discretion standard”). Such broad authority is afforded to North Carolina courts as “a means to control out-of-state counsel and to assure compliance with the duties and responsibilities of attorneys practicing in this State.” *Smith*, 141 N.C. App. at 209 (cleaned up).

29. The conduct of Shamis fell below the standard of conduct for attorneys appearing before this Court. Through the acts set forth above, Shamis has violated his duty of candor to the Court.

30. With regard to an attorney’s duty of candor, the North Carolina Rules of Professional Conduct state that “[a] lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]” N.C. R. Pro. Conduct 3.3(a)(1); *see also* N.C. R. Pro. Conduct Cmt. 3 (“[A]n assertion purporting to be on the lawyer’s own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.”).

31. In the *Brito* Motion, Shamis made a false representation of material fact in stating that he “has not been admitted practicing *pro hac vice* in North Carolina

State or Federal Court for the preceding five years[.]” In the Shamis Declaration, Shamis further provided inaccurate information by stating that his Florida Bar Number is 76124.

32. Shamis does not contend that these representations were true. Rather, he only asserts that he did not know that these statements were untrue at the time the *Brito* Motion and Shamis Declaration were filed.

33. At the 9 June 2025 hearing on the Motion, the Court directly questioned Shamis about how he would not have known that (1) he had appeared *pro hac vice* in at least five North Carolina cases within the preceding five years; and (2) that his Florida Bar number was not 76124. In response, Shamis merely stated that the circumstances surrounding this case and staffing issues at his law firm culminated in a “comedy of errors.”

34. In the Amended Shamis Declaration, he states that “there was no malicious or nefarious intent or a desire to withhold necessary information from this Court.” Even if that is true, Shamis’s conduct demonstrates, at best, gross negligence both in failing to keep records of his prior *pro hac vice* admissions and in making representations to the Court.

35. Of even greater concern is Shamis’s failure to notify this Court of Chief Judge Robinson’s Order in *Arthritis Associates* or to otherwise make this Court aware of the denial of his *pro hac vice* motion in that case.

36. It is difficult for the Court to fathom how, after being made aware of the inaccuracies in his filings in *Arthritis Associates*, Shamis did not feel the need to

determine whether he had made similar inaccuracies in his filings in *Brito*. Moreover, the fact that another North Carolina Superior Court judge had denied his *pro hac vice* application (on the same day that this Court had issued an Order granting him *pro hac vice* status in *Brito*) based on his misrepresentations to that judge was information that Shamis either knew or should have known would be material to this Court.

37. Shamis's affirmative misrepresentations to this Court and his failure to notify this Court of the *Arthritis Associates* Order give the Court sufficient cause to revoke his *pro hac vice* admission in this matter. *See Williams v. Kelly*, 2018 U.S. Dist. LEXIS 197756, at *6–7 (W.D.N.C. Nov. 20, 2018) (revoking *pro hac vice* admission when an out-of-state attorney's "misrepresentations regarding his disciplinary history constitute[d] a serious error and demonstrate[d] a lack of candor and honesty with the [c]ourt"); *La Michoacana Nat., LLC v. Maestre*, 611 F. Supp. 3d 87, 97 (W.D.N.C. 2020) (noting that "repeatedly misle[a]d[ing] the Court" without "any explanation or justification" is a "violation of [the] duty of candor" and alone warrants the revocation of an out-of-state attorney's *pro hac vice* admission).

38. The duty of candor requires a lawyer to correct a false statement of material fact or law previously made to the tribunal by the lawyer, even if the lawyer did not believe that the statement was false at the time it was made.

39. Shamis failed to timely comply with this duty, which is further cause for the Court to revoke Shamis's *pro hac vice* admission. *See Ge Betz, Inc. v. Conrad*, 231 N.C. App. 214, 251–52 (2013) (affirming the trial court's revocation of an out-of-state

attorney's *pro hac vice* admission when the attorney failed to disclose material information to the court); *McCarthy v. Hampton*, 2016 NCBC LEXIS 4, at *10 (N.C. Super. Ct. Jan. 7, 2016) (revoking an out-of-state attorney's *pro hac vice* admission where "[t]he vague and untimely explanation to the [c]ourt . . . only compounded the problem" and demonstrated a "fail[ure] to diligently explain the cause of his inaccurate representation").

40. Given his repeated violations of clear North Carolina rules and his failure to comply with his duty of candor, the Court is concerned that Shamis will continue to disregard the rules of North Carolina courts in future cases.

41. The Court believes that merely revoking his *pro hac vice* admission in this case, by itself, is insufficient to protect the integrity of the Court and the administration of justice.

42. Having considered alternative and lesser sanctions available and found them to be inadequate, the Court concludes that the appropriate sanction is that Shamis be barred from practicing in North Carolina courts for a period of one year. *See Couch*, 146 N.C. App. at 671 (holding that "[u]nder N.C.G.S. § 84-28, attorneys practicing in this state, including those admitted *pro hac vice*, may be suspended from practice for up to five years for a violation of the Rules of Professional Conduct"); *McCarthy*, 2016 NCBC LEXIS 4, at *11 (imposing a two-year prohibition on "practicing law in the State of North Carolina" after an out-of-state attorney had made repeated misrepresentations to the Court).

43. The Court will now address the conduct of Harris.

44. Although Harris is not as culpable as Shamis, he is nevertheless far from blameless in these events. Whatever lack of awareness Harris may have had regarding the inaccuracies in Shamis's *pro hac vice* application in *Brito* at the time they were made, as local counsel in both *Arthritis Associates* and *Brito*, Harris had actual notice of Chief Judge Robinson's *Arthritis Associates* Order yet failed to bring it to this Court's attention. It is inexcusable that this Court had to learn of the *Arthritis Associates* Order through independent means when Harris possessed this information and had a duty to bring it to the Court's attention.

45. Our Supreme Court has recognized that the purpose in requiring *pro hac vice* counsel to be associated with local counsel is to "satisf[y] a reasonable interest of our courts in having a member of the Bar of our State responsible for the litigation." *In re Smith*, 301 N.C. 621, 632 (1981) (cleaned up). Inherent in this proposition is the principle that local counsel must act responsibly because they are the mechanism by which "the courts . . . control out-of-state counsel and assure compliance with the duties and responsibilities of an attorney practicing in the courts of this State." *Id.*

46. The Court, in its discretion, admonishes Harris for his role in the events set out above.

CONCLUSION

THEREFORE, in the exercise of its discretion, the Court **ORDERS** as follows:

1. Plaintiff's Amended Motion for Shamis to Appear *Pro Hac Vice* and "Corrected" Amended Motion for Andrew Shamis to Appear *Pro Hac Vice* are **DENIED** with prejudice.
2. The Court's *sua sponte* Motion for Reconsideration of Order Granting Andrew Shamis Admission *Pro Hac Vice* is **GRANTED**.
 - a. Andrew J. Shamis's admission to practice in this matter *pro hac vice* is hereby **REVOKED**.
 - b. Andrew J. Shamis shall be **PROHIBITED** from appearing in any case in the courts of North Carolina for a period of **one year** from the date of this Order.
3. The Court will provide a copy of this Order to the North Carolina State Bar and to the Florida State Bar.

SO ORDERED, this the 30th day of June 2025.

/s/ Mark A. Davis

Mark A. Davis
Special Superior Court Judge for
Complex Business Cases