Pro Hac Vice Motions Practice

Effective 5 March 2024

IF I AM NOT LICENSED TO PRACTICE LAW IN NORTH CAROLINA, MAY I NONETHELESS APPEAR AS COUNSEL FOR A PARTY IN THE BUSINESS COURT?

Yes, provided that the specific requirements of N.C.G.S. § 84-4.1 are satisfied and the Business Court Judge assigned to the case exercises his or her discretion to permit the out-of-state attorney to appear *pro hac vice* in the proceeding.

To properly seek admission, out-of-state counsel must associate with counsel who is a North Carolina resident, is licensed to practice law in North Carolina, and agrees to appear as co-counsel of record in the case. The in-state lawyer should file a notice of appearance in the action on behalf of the party, (*see* BCR 3.12), and then file a motion for *pro hac vice* admission of the out-of-state attorney in accordance with the North Carolina Business Court Rules, (*see, e.g.*, BCRs 7.2, 7.3, 7.5, and 7.10(j)), setting forth all of the information required by section 84-4.1. The motion must be filed and signed by the North Carolina licensed attorney and also signed by the out-of-state attorney seeking *pro hac vice* admission. Absent direction from the Court, no brief need be filed in support of the motion.

North Carolina counsel should ensure that the motion for *pro hac vice* admission closely follows section 84-4.1 and provides the following information:

1. The attorney's full name, bar membership number, status as a practicing attorney in another state, mailing address, phone number, and email address to be used as the attorney's contact information of record with the court, pursuant to G.S. 1A-1, Rule 5. (N.C.G.S. § 84-4.1(1), (1a).)

2. Whether the out-of-state attorney has been admitted to practice pro hac vice in North Carolina in the preceding five years, and if so, the case name, the state or federal court in which the case was filed, the date of *pro hac vice* admission, and the dates the case

commenced and concluded. *See State v. Hunter*, 290 N.C. 556, 568 (1976) ("[N.C.G.S. § 84-4.1] forbids the courts from allowing non-resident counsel . . . from practicing habitually in our courts[.]").

3. A statement signed by the client identifying the client's address and declaring that the client has retained the out-of-state attorney to represent the client in the proceeding. (N.C.G.S. § 84-4.1(2).) If the client is an entity, the client statement must include (i) the printed full legal name of the individual signing on the entity's behalf, (ii) the signatory's title and/or position within the entity, and (iii) an affirmation that the signatory has the authority to retain the out-of-state attorney to represent the entity in the litigation.

4. A statement signed by the out-of-state attorney seeking admission:
    a. representing that if admitted to appear *pro hac vice* in the action, and unless permitted to withdraw sooner by order of the court, the out-of-state attorney will continue to represent the client in the proceeding until its final determination, and that with reference to all matters incident to the proceeding, the out-of-state attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the State Bar of North Carolina in good standing;

    b. representing that the state(s) in which the out-of-state attorney is regularly admitted to practice grant(s) like privileges to members of the State Bar of North Carolina in good standing who seek admission in that/those state(s), (N.C.G.S. § 84-4.1(4));

    c. representing that the attorney has associated and is personally appearing in the proceeding, with the attorney filing the motion who (i) is a resident of this State, (ii) has agreed to be responsible for filing a registration statement with the North Carolina State Bar, (iii) is duly and legally admitted to practice in the General Court of Justice of North Carolina, and (iv) upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the out-of-state attorney within this State, (N.C.G.S. § 84-4.1(5)); and

    d. accurately disclosing the out-of-state attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization and (ii) revocation of any *pro hac vice* admission, (N.C.G.S. § 84-4.1(6)). The statement shall also reflect whether the out-of-state attorney is a member in good standing of the bar(s) of the state(s) in which the attorney is regularly admitted to practice.

5. A statement signed by the attorney filing the motion that:
    a. he/she is a resident of the State of North Carolina, (N.C.G.S. § 84-4.1(5));

    b. either (i) he/she has forwarded a check in the amount of $225.00 to the Clerk of Superior Court for the County in which the action is pending or (ii) he/she will promptly forward to the Clerk such a check upon admission of the out-of-state attorney, (N.C.G.S. § 84-4.1(7));

    c. he/she will forward to the North Carolina State Bar within thirty days of the admission of out-of-state counsel a registration statement, as required by the State Bar, (27 N.C.A.C. 1H, Section .0101); and

    d. pursuant to BCRs 7.3 and 7.4, he/she has consulted with all other counsel and unrepresented parties to the action and sets forth the position of each party concerning the motion, whether any party intends to file a response to the motion, and whether any party wishes to be heard concerning the motion, (BCRs 7.3, 7.4).

Notwithstanding compliance with all of the above requirements, the decision to grant or deny a motion for *pro hac vice* admission is entrusted to the sound discretion of the Business Court Judge assigned to the case.