

CIVIL PROCEDURE

Civil Procedure: *Pro Hac Vice* Status

Clare v. Coleman (Parent) Holdings, Inc.,
928 So. 2d 1246 (Fla. 4th Dist. App. 2006)

An out-of-state attorney admitted to appear *pro hac vice* is entitled to notice and an opportunity to be heard before a Florida court may revoke his *pro hac vice* status.

FACTS AND PROCEDURAL HISTORY

Thomas Clare was among a number of attorneys admitted to appear *pro hac vice* in Palm Beach County's Fifteenth Judicial Circuit Court on behalf of Morgan Stanley & Company (Morgan Stanley) in a suit against Coleman Holdings (Coleman). Following a discovery dispute, Coleman filed a motion for a default judgment based on what it deemed Morgan Stanley's "pattern of abusive conduct aimed at obstructing justice." *Coleman*, 928 So. 2d at 1248. At the hearing on that motion, the court asked for a list of the attorneys appearing *pro hac vice*, and in its default order against Morgan Stanley the court revoked their *pro hac vice* status. Clare was not present at this hearing.

Clare filed a petition for a writ of certiorari in the Fourth District Court of Appeal, alleging that the circuit court violated his due process rights when it revoked his *pro hac vice* status without providing him with notice and an opportunity to be heard. Clare also alleged that revoking his *pro hac vice* status caused irreparable harm because it damaged his professional reputation and hindered his ability to practice in Florida and other jurisdictions. He asked the Fourth District to strike the revocation of his *pro hac vice* status from the circuit court's record. The Fourth District granted Clare's petition.

ANALYSIS

In order to successfully challenge a revocation of *pro hac vice* status, an out-of-state attorney must establish that the trial court deviated from the essential requirements of law and that there is no adequate remedy at law on final appeal. *Katz v. N.M.E. Hosps., Inc.*, 842 So. 2d 853, 854 (Fla. 4th Dist. App. 2002). The Fourth

District in this case first noted that Florida courts may revoke an out-of-state attorney's *pro hac vice* status when the attorney is involved in misconduct that negatively affects the administration of justice. *St. Indus., Inc. v. Jernigan*, 751 So. 2d 680, 682 (Fla. 5th Dist. App. 2000). However, the court also pointed out the general rule that, pursuant to the Fourteenth Amendment, an attorney cannot be precluded from practicing law without notice and an opportunity to be heard. *Kleiner v. First Natl. Bank of Atlanta*, 751 F.2d 1193, 1211 (11th Cir. 1985).

The Fourth District concluded that the trial court improperly revoked Clare's *pro hac vice* status. The court noted that Coleman did not allege that Clare had engaged in misconduct; nor did Coleman seek to revoke his *pro hac vice* status in either of its motions against Morgan Stanley. Although Coleman verbally requested that the court revoke the out-of-state attorneys' *pro hac vice* status, the court failed to do so during the hearing at which the request was made. The Fourth District concluded that because there was no record of Clare's misconduct within the proceedings and because the trial court had failed to include any findings that Clare had engaged in misconduct, revoking his *pro hac vice* status without giving him notice and an opportunity to be heard deviated from the essential requirements of law.

The Fourth District then determined that Clare was irreparably harmed by the trial court's actions. The court agreed that revoking Clare's *pro hac vice* status damaged his professional reputation and hindered his ability to practice law within the state and other jurisdictions. The court reasoned that because non-Florida lawyers who are disciplined or held in contempt due to misconduct while practicing law in other jurisdictions are not permitted to appear in Florida courts *pro hac vice*, the trial court's revocation of Clare's *pro hac vice* status could harm his chances to appear *pro hac vice* in other Florida courts as well as in other jurisdictions. Accordingly, the Fourth District directed the trial court to strike the revocation of Clare's *pro hac vice* status from its order.

SIGNIFICANCE

Clare gives out-of-state attorneys appearing *pro hac vice* in Florida courts due process protection by requiring courts to give them notice and an opportunity to be heard before revoking their

pro hac vice status. Before *Clare*, granting and revoking *pro hac vice* status was solely within the discretion of the court. There is no right to appear *pro hac vice* in Florida, and the ability to appear *pro hac vice* is not protected by the Due Process Clause of the United States Constitution. *Clare* seems to extend due process protections afforded to Florida attorneys to non-Florida attorneys because both are now entitled to notice and an opportunity to be heard before a court imposes sanctions. However, *Clare* may leave the state of the law on this issue somewhat unclear because the court does not expressly cite due process as the reason for its decision.

RESEARCH REFERENCES

- 4 Fla. Jur. 2d *Attorneys at Law* § 79 (Westlaw database updated Aug. 2007).
- 3 Fla. Jur. 2d *Appellate Review* § 458 (Westlaw database updated Aug. 2007).

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