

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE FLORIDA BAR
AND THE FLORIDA RULES OF JUDICIAL
ADMINISTRATION - MULTIJURISDICTIONAL
PRACTICE OF LAW

CASE NO. SC07-1844

COMMENTS OF BILL WAGNER

BILL WAGNER, a member in good standing of the Florida Bar, respectfully submits these comments regarding the captioned proposed amendments as follows:

1. The proposed verified motion for admission to appear *pro hac vice* pursuant to Florida Rules of Judicial Administration 2.510 states in paragraph 1 that “Movant is not a resident of the state of Florida.” The Proposed Amendment is based upon Rule 2.510(a)(1) of Florida Rules of Judicial Administration and is therefore a correct interpretation of the Rule, but the policy and philosophy behind that provision should be reviewed.

It is respectfully submitted that the issue should be whether or not the movant is licensed to practice law in the state of Florida. It is entirely possible that a “resident” of the state of Florida may maintain his regular business office for the practice of law in other states and not ordinarily practice law in the state of Florida where, for whatever reason, he may technically be a “resident”. It seems inconsistent that one would allow a person, licensed in some other state, to appear *pro hac vice* in litigation in Florida, but prohibit such appearance if that person is a

resident of the state of Florida. Likewise it would seem strange that such a person would be prohibited from appearing if that person were not licensed to practice in the state in which he resided. Would a lawyer licensed by Florida, but residing out of state, be prohibited from appearing *pro hac vice* in some third state merely because he or she does not reside in Florida?

The issue is confused by Rule 4-5.5(a) of The Rules Regulating the Florida Bar, which appears to prohibit a lawyer from practicing in a jurisdiction “other than the lawyer’s home state”. Use of a fluid term like “home state” should be discouraged. My “home state” will always be Florida although I have been a resident of or domiciled in other states.

It would appear unduly restrictive to require that any lawyer, in order to practice under any circumstance in the state of Florida, must first be admitted to the Bar of his “home state”. On its face, this would prevent a lawyer who is a resident of Tallahassee admitted to the practice in the state of Florida and having his business office in Tallahassee from deciding to live across the border at a farm in Georgia.

2. Paragraph 15 of the same application apparently is intended to form the basis of regulating Florida Rules of Judicial Administration 2.510 (a)(5), which is intended to prohibit a lawyer from becoming involved in a “general practice”

before Florida courts. The form speaks in terms of “filed motions to appear”. The rule however reads as follows:

“For purposes of this rule, more than 3 appearances within a 365-day period in separate representations shall be presumed to be a ‘general practice.’”

The Florida Bar had interpreted the term “appearances” to really mean “filed more than 3 motions to appear” during the applicable time period. The obvious conflict should be resolved since, after filing a “motion to appear”, a lawyer might continue to “appear” in the case for several years and thus might be actually “appearing” as counsel in a large number of cases while actually having filed motions to appear in few cases.

The conflict in wording should be resolved. Either the rule should be changed to make the test “filing motion to appear”, or the application should be changed to make “appearances” in court the test.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the above was served by mail on _____, upon the following.:

John F. Harkness, Jr.
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

Bill Wagner

CERTIFICATE OF TYPE SIZE AND STYLE

Bill Wagner HEREBY CERTIFIES that this petition is typed in 14 point
Times New Roman Regular type.

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