

SUPREME COURT OF WISCONSIN

Jensen v. Wisconsin Patients Compensation Fund, 241 Wis. 2d 142

621 N.W.2d 902 (2001) · No. No. 99-2774 · Decided February 13, 2001

SUMMARY

The Wisconsin Supreme Court held that an attorney admitted pro hac vice must receive notice and some meaningful opportunity to respond before that status is revoked under Wisconsin Supreme Court Rule 10.03(4). The court reversed the circuit court's sua sponte revocation of the attorney's admission, which had occurred without notice or a hearing, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Diane S. Sykes
JURISDICTION	Wisconsin
DECIDED	February 13, 2001
DOCKET	No. 99-2774
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs and their attorney obtained leave to appeal a nonfinal circuit-court order revoking the attorney's pro hac vice admission. The Wisconsin Court of Appeals certified to the Wisconsin Supreme Court the question whether notice and an opportunity to respond are required before such revocation.
STANDARD OF REVIEW	The court addressed the certified legal question and the application of Supreme Court Rule 10.03(4); the rule commits the decision to grant or withdraw pro hac vice admission to the circuit court's discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kathleen Jensen, Bradley Jensen, Erik Jensen v. Wisconsin Patients Compensation Fund, David McPherson, M.D., Lakeland Medical Center

TOPICS

appellate procedure

civil procedure

standard of review

PRACTICE AREAS

civil procedure

legal ethics and attorney discipline

appellate procedure

QUESTIONS PRESENTED

1. Whether an attorney admitted pro hac vice must receive notice and an opportunity to respond before the circuit court revokes that admission under SCR 10.03(4).

HOLDINGS

1. As a matter of judicial policy and sound judicial administration, an attorney admitted pro hac vice must receive some form of notice and a meaningful opportunity to respond before the circuit court withdraws that status under SCR 10.03(4). The notice must identify the conduct at issue and the specific reason that conduct may justify revocation, while the form and scope of the notice and response remain within the circuit court's discretion.
2. The circuit court's consideration of the mistrial motion did not satisfy the required notice and opportunity to respond because revocation of pro hac vice status was never identified as a possible sanction and the revocation order was entered five days later without any formal or informal notice.

KEY QUOTATIONS

"We therefore conclude that, for reasons of judicial policy, attorneys admitted pro hac vice must be provided some form of notice and an opportunity to respond before pro hac vice status may be withdrawn under SCR Rule 10.03(4)." (241 Wis. 2d 150)

"The form of the notice and opportunity to respond is left to the sound discretion of the circuit court, provided, however, that the attorney is notified of the conduct which is alleged to violate SCR 10.03(4) and the specific reason this conduct may justify revocation under the rule." (241 Wis. 2d 150)

FACTUAL BACKGROUND

Kathleen, Bradley, and Erik Jensen brought a medical-malpractice action alleging that negligence during Erik's delivery caused spinal-cord damage and paraplegia. The circuit court admitted Illinois attorney Lee Phillip Forman pro hac vice. During trial, the court concluded that the plaintiffs' expert had materially changed his opinion after receiving additional materials and that Forman had failed to notify opposing counsel, leading the court to grant a mistrial and characterize Forman's conduct as reprehensible. Five days later, without notice or an opportunity to respond, the court revoked Forman's pro hac vice admission.

PROCEDURAL HISTORY

During a medical-malpractice trial, the circuit court granted a mistrial based on the plaintiffs' pro hac vice counsel's conduct concerning an expert witness's changed trial testimony. Five days later, the circuit court sua sponte revoked counsel's pro hac vice admission without notice or an opportunity to respond. The court of appeals granted leave to appeal and certified the notice-and-opportunity question to the Wisconsin Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court's order revoking Forman's pro hac vice admission was reversed, and the cause was remanded for further proceedings consistent with the opinion, including notice and an opportunity for Forman to respond.

CASES CITED

- Filppula-McArthur v. Halloin, 2001 WI 8, 241 Wis. 2d 110, 622 N.W.2d 436
- In re Pierce, 189 Wis. 441, 207 N.W. 966 (1926)
- Leis v. Flynt, 439 U.S. 438, 442-43 (1979)
- Labor and Farm Party v. Election Bd., 117 Wis. 2d 351, 354, 344 N.W.2d 177 (1984)
- Zander v. County of Eau Claire, 87 Wis. 2d 503, 519, 275 N.W.2d 143 (Ct. App. 1979)
- Johnson v. Trueblood, 629 F.2d 302 (3d Cir. 1980) (per curiam)
- Bank of Hawaii v. Kunimoto, 984 P.2d 1198, 1214 (Haw. 1999)
- Kirkland v. National Mortgage Network, Inc., 884 F.2d 1367, 1371-72 (11th Cir. 1989)
- Taberer v. Armstrong World Indus., Inc., 954 F.2d 888 (3d Cir. 1992)
- United States v. Collins, 920 F.2d 619 (10th Cir. 1990)
- United States v. Summet, 862 F.2d 784 (9th Cir. 1988)
- Koller v. Richardson-Merrell, Inc., 737 F.2d 1038 (D.C. Cir. 1984), rev'd on other grounds, 472 U.S. 424 (1985)
- Hallman v. Sturm Ruger & Co., Inc., 639 P.2d 805 (Wash. Ct. App. 1982)