

Proceeding Without Local Counsel— lawyer beware!



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09/13/2019

Arkansas law is clear that “pleadings filed on behalf of another by a person not licensed to practice law in [Arkansas] are a nullity.” *DeSoto Gathering Co. v. Hill*, 531 S.W.3d 396, 403 (Ark. 2017). Normally, this means that out-of-state lawyers associate with local counsel or make a motion to appear *pro hac vice*, lest any action taken has the same effect as if none had been taken at all. However, in an opinion announced this week by the Eighth Circuit Court of Appeals, the Court recognized what can only be described as an extremely narrow exception.

A large company was sued in Arkansas state court, but rather than appear with an Arkansas attorney, the company’s Texas lawyer filed a notice of removal in state circuit court. The clerk of the state court knew that the filer was not a licensed Arkansas attorney, but she accepted the notice anyway and stamped it “FILED.” The case went off to federal district court. On appeal, the Eighth Circuit had to decide whether the out-of-state attorney had filed a notice of removal, or whether the purported filing was a nullity. The Eighth Circuit said that the filing was acceptable.

Based on the above, the facial conclusion here is that this case was a win for the out-of-state company that appeared through out-of-state counsel. While this is technically true, practically speaking the company did not fare well. How so? Cost. Time. Finality. This case ended up being a relatively straightforward one, and the company defendant was granted judgment following merits briefing. Eventually, a federal appeals court affirmed. However, this all was finalized about two years after the case began.

Generally, a longer pendency of a case means less finality, more risk, and greater legal costs for a company. Not only can an appeal to the Eighth Circuit be costly, but most notably from a business perspective, that cost is completely unknown upfront. Thus, for businesses seeking predictability of litigation expenses so that they can budget for a case, an appeal can throw a wrench in the mix. For these reasons, it is prudent to litigate not only the case in front of you, but also with an eye towards closing loopholes from which an appeal could later be mounted. In this case, the only issue on appeal was whether the notice of removal had been properly filed, which is a loophole that would have been closed by the timely hiring of local counsel.

Local counsel is crucial in Arkansas because navigating the local courts can be incredibly nuanced. For example, there is one local judge that has stated they will not grant a *pro hac vice* motion for any out-of-state attorney who has put his or her name on a pleading or filing before an order is entered granting him or her *pro hac* admission. Such traps can be navigated thoughtfully with local counsel.

Case Reference: *Brooks v. Liberty Life Assurance Co. of Boston*, No. 18-2612 (8th Cir. Sept. 10, 2019).