



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 22, 2005

Francis A. Humphries, Jr.
Chief Deputy Solicitor
Fifteenth Judicial Circuit
P. O. Box 1276
Conway, SC 29528

Dear Mr. Humphries:

In a letter to this office you questioned the applicability of S.C. Code Ann. § 40-5-310 to an out of state licensed attorney. Such provision states that

No person may practice or solicit the cause of another person in a court of this State unless he has been admitted and sworn as an attorney. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

You referenced the situation where a lawyer licensed in North Carolina filed pleadings in Horry County on behalf of a domestic litigant without first petitioning to appear *pro hac vice*. You indicated that while Section 40-5-310 prohibits one not "admitted and sworn as an attorney" to practice in a court of this State, the statute is silent as to any specific requirement that the person must be "admitted and sworn" to practice law in this State as opposed to any other State.

In my opinion, Section 40-5-310 should be construed as authorizing an individual to practice law in this State if that individual has been admitted and sworn as an attorney in South Carolina. While Section 40-5-310 does not specifically provide such distinction, Rule 404, SCACR, states that

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Upon written application, an attorney who is not admitted to practice law in South Carolina and who is admitted and authorized to practice law in the highest court of another state or the District of Columbia may appear *pro hac vice* in any action or proceeding before a court of this state if an attorney admitted to practice law in South Carolina is associated as attorney of record.

Such a rule would be unnecessary if Section 40-5-310 is construed as being applicable to an individual who is "admitted and sworn as an attorney" in another state so as to authorize that individual to practice law in South Carolina. See also: Rule 405, SCACR (authorization for a limited certificate of admission to practice law in South Carolina where the individual "...has been admitted to practice law in the highest court of another state or the District of Columbia;....").

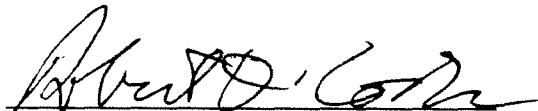
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General