

FILED
12-03-2020
Clerk of Circuit Court
Kenosha County
2020CF000983

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

DA Case No.: 2020KN003907

STATE OF WISCONSIN

Plaintiff,

Court Case No.:
2020CF000983

vs.

KYLE H. RITTENHOUSE

DOB: 01/03/2003

Defendant.

**STATE'S BRIEF IN
OPPOSITION TO
MOTIONS FOR
ADMISSION *PRO HAC*
VICE**

For Official Use

The State of Wisconsin, by Assistant District Attorneys Thomas C. Binger and Jason R. Zapf, hereby opposes the Motions to Admit Attorneys John M. Pierce and Andrew Calderon *Pro Hac Vice*.¹ The basis for this motion is that serious questions exist whether Attorney Pierce will be able to conform to the Wisconsin Rules of Professional Conduct for attorneys, specifically rules 20:1.7, 20:1.8 and 20:1.15, due to his own personal financial difficulties and his close ties with the “Fight Back Foundation”, a Texas organization which has amassed a substantial yet unregulated and unreported “slush fund” purportedly for the benefit of the defendant. Attorney Pierce has also already committed numerous violations of Wisconsin Supreme Court Rule 20:3.6 as outlined in the State’s November 20, 2020 Motion Regarding Trial Publicity, which is incorporated herein by reference.

The Circuit Court is not required to admit an out-of-state attorney *Pro Hac Vice*

Pursuant to Wisconsin Supreme Court Rules, “[a] court or judge in this state may allow a nonresident counsel to appear . . . in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding.” SCR 10.03(4)(b). “A court or judge may, after hearing, rescind permission for a nonresident counsel to appear before it if the lawyer by his or her conduct manifests incompetency to represent a client in a

¹ Attorney Pierce is a partner with the Pierce Bainbridge firm out of Los Angeles and has held himself out in the media and on Twitter as an attorney for the defendant. Upon information and belief, Attorney Calderon is an associate in the same firm who is assisting Attorney Pierce with this case.

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Wisconsin court or unwillingness to abide by the rules of professional conduct for attorneys or the rules of decorum of the court.” *Id.* at (e). “By allowing counsel to appear pro hac vice, we have removed the safeguards that ensure their clients the same ethical and competent representation required of Wisconsin attorneys. In lieu of such safeguards, we have entrusted to the circuit court the discretionary power to terminate pro hac vice representation.” *Filppula-McArthur ex rel. Angus v. Halloin*, 2001 WI 8, ¶ 35, 241 Wis. 2d 110, 129–30, 622 N.W.2d 436, 444 (2001).

There are three bases for revocation of an attorney's pro hac vice status: (1) manifestation of incompetency to represent a client in a Wisconsin court; (2) unwillingness to abide by the rules of professional conduct for attorneys; and (3) unwillingness to abide by the rules of decorum. *Id.* at ¶ 37. SCR 10.03 gives the circuit court power to revoke a nonresident attorney's admission for proscribed conduct in any Wisconsin court. *Id.* at ¶ 46, SCR 10.03 (NOTES). The power is discretionary. The rule does not require that the conduct must occur in the very litigation or court in which the revocation occurs. SCR 10.03 (NOTES).

It is professional misconduct for an attorney to violate the attorney's oath. SCR 20:8.4(g). As part of the attorney's oath an attorney swears that he or she “will maintain the respect due to courts of justice and judicial officers.” SCR 40.15. A failure to maintain due respect to the courts “may constitute a violation of the rules of professional conduct.” *Halloin*, 2001 WI 8 at ¶ 39. Even if the attorney appearing *pro hac vice* has never taken Wisconsin's attorney's oath, they are still bound by the oath. *Id.* at ¶ 40.

If the Court rejected Attorneys Pierce and Calderon, the defendant would still be represented by 2 experienced Wisconsin criminal defense attorneys, Mark Richards and Corey Chirafisi.

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Attorney Pierce's personal financial difficulties raise significant ethical concerns, especially when he has close ties to a substantial yet unregulated and unreported "slush fund" that is intended solely for the benefit of the defendant.

Attorneys Pierce and Calderon are members of the Pierce Bainbridge law firm out of Los Angeles, a small firm left over after its much larger predecessor, Pierce Bainbridge Beck Price & Hecht, dissolved under a cloud of debt and nearly all of its attorneys left.² That dissolution occurred amidst numerous lawsuits filed against Attorney Pierce which alleged that he defaulted on business and personal loans. For example, Slate Advance sued Attorney Pierce personally in Nassau County, NY on March 17, 2020 for allegedly defaulting on a \$749,000 loan.³ West Coast Business Capital sued Attorney Pierce personally in Erie County, NY on March 12, 2020 for allegedly defaulting on a \$387,400 loan.⁴ A homeowner sued Attorney Pierce personally on July 1, 2020 in Ventura County, CA for allegedly breaching a rental agreement on a \$1.3 million home.⁵ According to Court records, a default judgment was entered against Attorney Pierce in that case on August 26, 2020. Attorney Pierce also took a leave of absence in March, 2020 under questionable circumstances.⁶

Even before all of those lawsuits, Attorney Pierce filed an Income and Expense Declaration under penalty of perjury on November 7, 2019 which stated that he had no income, had monthly expenses of \$49,581, and owed approximately \$1.2 million in attorney's fees and on various outstanding loans.⁷ It seems clear that Attorney Pierce is facing

² https://abovethelaw.com/2020/04/wannabe-biglaw-firm-closes-its-doors/#:~:text=Pierce's%20departure%20left%20attorney%20Tom,firm%20is%20closing%20its%20door.https://www.lawfuel.com/blog/piercebainbridge_doubledipped_collateral/

³ <https://www.keepandshare.com/doc25/109779/slate-advance-llc-complaint-v2-pdf-18-1-meg?dn=y&dnad=y>.

⁴ <https://www.keepandshare.com/doc25/109822/wcb-lawsuit-v-pb-3-12-20-pdf-2:47k?dn=y&dnad=y>.

⁵ <https://www.keepandshare.com/doc25/110272/homeowners-complaint-v-hamilton-pierce-pdf-5-6-meg?da=y>.

⁶ <https://www.abajournal.com/news/article/pierce-bainbridge-managing-partner-goes-on-leave-amid-internal-probe>

⁷ <https://www.keepandshare.com/doc25/110164/pierce-income-expense-declaration-pdf-234k?dn=y&dnad=y>

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significant personal financial difficulties. This is not the first time that those difficulties have raised concerns over his admission to practice *Pro Hac Vice* on a case.⁸

There is no indication that the defendant is personally paying for Attorneys Pierce and Calderon to represent him in this case. Rather, the attorneys are being compensated by the “Fight Back Foundation”, a 501(c)(4) non-profit founded on August 12, 2020 by Attorney Pierce, Lin Wood, and Lawson Pedigo and registered in Texas.⁹ The purpose of the foundation is ostensibly to fund legal expenses in their fight to bring “lawsuits to stop the lies and smears of the radical left.”¹⁰ A 501(c)(4) is a tax-exempt social welfare organization that “must not be organized for profit and must be operated exclusively to promote social welfare” and the earnings of any 501(c)(4) organization “may not inure to the benefit of any private shareholder or individual.”¹¹ “An organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations operated for profit.”¹²

Until recently, the “Fight Back Foundation’s” web page featured a prominent banner soliciting donations to “help” the defendant in this case. Upon information and belief, the \$2 million that was posted as bond for the defendant came from donations to the “Fight Back Foundation”. However, the Fightback.law website provides no information as to where its money goes. There is no information regarding who receives that money. There is no information specifying how the money will be spent. The website has deceived at least one

⁸ <https://www.keepandshare.com/doc25/110017/opposition-to-pierce-to-pierce-phv-alam-v-ahmad-pdf-205k?da=y>. The day after this brief was filed, Attorney Pierce withdrew his motion for admission *Pro Hac Vice* in that case.

⁹ <https://fightback.law/>

¹⁰ <https://www.insider.com/kyle-rittenhouse-lawyers-john-pierce-lin-wood-fightback-foundation-2020-8>

¹¹ <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>. If the “Fight Back Foundation” is paying for the defendant’s attorneys, then it is violating this requirement.

¹² *Id.*

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prominent donor, Mike Lindell, who stated publicly that he did not intend for his \$50,000 contribution to the Foundation to be used to bail the defendant out of jail.¹³

Mr. Wood is listed as “Chairman of the Board and CEO” and Mr. Pedigo is listed as “Co-founder and Vice President”. The website also states that Bernard Kerik has joined the “Board of Directors” of the Foundation. However, there is no information regarding who actually manages the money raised by the foundation or how they are compensated for their services. Shortly after become the defendant’s attorney, Mr. Pierce stated publicly that he was stepping away from the Fight Back Foundation to avoid the appearance of an improper conflict of interest. However, Attorney Wood also represents the defendant¹⁴ and has stated that the Foundation would still pay for Mr. Pierce’s representation in this case.¹⁵ Attorney Pierce regularly uses his Twitter account, which has over 32,000 followers, to encourage people to donate to the “Fight Back Foundation”.¹⁶

The “Fight Back Foundation” represents itself to the public and to donors as an entity raising money to benefit the defendant. It has apparently already raised over \$2 million to benefit him, and Attorney Pierce has told donors that substantial additional sums will need to be raised because it will be very expensive to defend the defendant.¹⁷ It is clear, therefore, that the money held by the “Fight Back Foundation” should be held in Trust for the defendant pursuant to Wis. SCR 20:1.15, which states that “[a]ll funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.” Rather than establish a Trust account in accordance with the

¹³ <https://www.newsweek.com/mypillow-ceo-intended-50k-donation-used-fund-election-fraud-litigation-rather-kyle-1549952>

¹⁴ <https://nypost.com/2020/08/27/lawyer-for-kenosha-shooter-kyle-rittenhouse-demands-justice-for-kyle/>.
<https://twitter.com/linwood/status/1299044828421017601?lang=en>

¹⁵ <https://www.usatoday.com/story/news/politics/2020/09/04/kyle-rittenhouse-lawyer-steps-back-fightback-defense-fund/5717120002/>

¹⁶ <https://twitter.com/CaliKidJMP/status/1327870407383396352>;
<https://twitter.com/CaliKidJMP/status/1327270711279448065>;
<https://twitter.com/CaliKidJMP/status/1327083994341634048>

¹⁷ <https://twitter.com/CaliKidJMP/status/1328769166686425089>

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Rules of Professional Conduct governing attorneys in Wisconsin, Attorney Pierce created a Texas foundation and continues to actively solicit donations to that foundation that will allegedly pay his legal fees in this case. The “Fight Back Foundation” is not a proper Trust account pursuant to Wis. SCR 20:1.15 and has not complied with any of the reporting requirements set forth in the rule. Rather, the Foundation appears to be simply a “slush fund” for the benefit of Attorney Pierce and others that has already misled one donor into mistakenly giving \$50,000 to bail the defendant out of jail. Other than the \$2 million posted for bond in this case, there is no indication how much other money the Foundation has raised or who has received it.

This creates a potential conflict of interest for Attorney Pierce. Given his own substantial personal debts, his involvement with an unregulated and opaque “slush fund” provides ample opportunity for self-dealing and fraud. The more that the Foundation raises in donations, the more he may personally benefit. Money that should be held in trust for the defendant may instead be used to repay Attorney Pierce’s numerous creditors. The reason that Wisconsin attorneys are required hold their client’s money in Trust is to prevent exactly this type of situation.

Attorney Pierce has already violated SCR 20:3.6 governing Trial Publicity

As the State has documented in its November 20, 2020 Motion, Attorney Pierce has already given numerous public interviews regarding the case that have a “substantial likelihood of materially prejudicing” a trial in this case. The State incorporates that Motion herein by reference.

The State and the Defendant both have a right to a fair trial in this case. The jury should not be influenced by extrajudicial statements, videos or interviews produced by either party. Attorneys are held to a high standard in this regard, and Attorney Pierce should not be allowed to shirk that professional responsibility simply because he is not licensed to practice

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law in the State of Wisconsin. His conduct thus far suggests that he will not be able to conform his behavior to our ethical rules. Indeed, in a court filing in the Illinois extradition matter regarding the defendant, Attorney Pierce alleged that extraditing the defendant to Kenosha County would be the equivalent of turning him over to the “mob”.¹⁸ It is not clear whether Attorney Pierce considers the Circuit Court or the Kenosha County Sheriff’s Department to be the “mob” here, but this statement in a court document does not suggest that he will exhibit appropriate decorum toward our court.

For the foregoing reasons, the State respectfully requests that the Court reject the Motions to Admit Attorneys Pierce and Calderon *Pro Hac Vice* in this matter.

Date Signed: 12/03/20

Electronically Signed By:

Thomas C. Binger

Assistant District Attorney

State Bar #: 1027874

¹⁸ https://www.washingtonpost.com/national/kyle-rittenhouse-extradition-hearing-delayed-as-lawyer-claims-a-political-prosecution/2020/10/09/4977b690-0a47-11eb-9be6-cf25fb429f1a_story.html