

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NEW YORK

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 SECURITIES AND EXCHANGE :  
 COMMISSION, :  
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 Plaintiff, :  
 :  
 -against- :  
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 GPB CAPITAL HOLDINGS, LLC, :  
 ASCENDANT CAPITAL, LLC, :  
 ASCENDANT ALTERNATIVE :  
 STRATEGIES, LLC, DAVID GENTILE, :  
 JEFFREY SCHNEIDER, and JEFFREY :  
 LASH, :  
 :  
 Defendants. :  
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**ORDER**  
 21 Civ. 583 (MKB) (VMS)

**Vera M. Scanlon, United States Magistrate Judge:**

On February 4, 2021, Plaintiff Securities and Exchange Commission (“Plaintiff”) commenced this securities fraud action against Defendants GPB Capital Holdings, LLC (“GPB”); Ascendant Capital, LLC (“Ascendant Capital”); Ascendant Alternative Strategies, LLC (“Ascendant Strategies”); David Gentile (“Mr. Gentile”); Jeffrey Schneider (“Mr. Schneider”); and Jeffrey Lash (“Mr. Lash” and, collectively with GPB, Ascendant Capital, Ascendant Strategies, Mr. Gentile, and Mr. Schneider, “Defendants”). See ECF No. 1.

Before the Court is the motion of Daniel J. Horwitz (“Mr. Horwitz”) of McLaughlin & Stern, LLP, counsel for Mr. Gentile, seeking the pro hac vice admission of Steven L. Hayes (“Mr. Hayes”) of Steven L. Hayes, PA on behalf of non-parties Matt Judkin (“Mr. Judkin”), Rick Brown (“Mr. Brown”), and Michael Fasano (“Mr. Fasano” and, collectively with Mr. Judkin and Mr. Brown, the “Hayes Clients”). See ECF No. 110. Mr. Hayes seeks pro hac vice admission “for the specific purpose of filing a request for mediation, responding to any opposition and, if

the request is granted, to appear at the mediation representing Matt Judkin, Rick Brown and Michael Fasano, the three managers appointed by David Gentile for GPB Capital Holdings, LLC.” ECF No. 110-4. Plaintiff and GPB opposed. See ECF Nos. 111, 114. Mr. Gentile filed a response in support of the motion. See ECF No. 113. The Hayes Clients replied. See ECF No. 115.<sup>1</sup> The Hayes Clients have not made a motion to intervene in this action.

Local Civil Rule 1.3(c) provides, in pertinent part:

(c) A member in good standing of the bar of any state or of any United States District Court may be permitted to argue or try a particular case in whole or in part as counsel or advocate, upon motion as described below.

After requesting pro hac vice electronic filing privileges through the PACER website, applicants shall electronically file a motion for admission pro hac vice on the court’s ECF system and pay the required fee.

The motion must be accompanied by a certificate of the court for each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days of filing and states that the applicant is a member in good standing of the bar of that state court, and an affidavit by the applicant stating

- (1) whether the applicant has ever been convicted of a felony,
- (2) whether the applicant has ever been censured, suspended, disbarred or denied admission or readmission by any court,
- (3) whether there are any disciplinary proceedings presently against the applicant and
- (4) the facts and circumstances surrounding any affirmative responses to (a) through (c)[.]

On its face, the motion appears to comply with Local Civil Rule 1.3(c).<sup>2</sup> Mr. Hayes necessarily requested electronic filing privileges via PACER and filed the motion electronically, see 7/21/2022 Dkt. Entry; paid the required fee, see id.; included certificates of good standing

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<sup>1</sup> The Hayes Clients’ reply refers to Mr. Brown as “Rick Murphy” without explanation. See ECF No. 115 at 1. GPB conjectures that the reference to Mr. Brown as such was an error. See ECF No. 114 at 1, n.1.

<sup>2</sup> That Mr. Horwitz moved for Mr. Hayes’s pro hac vice admission was unnecessary pursuant to Local Civil Rule 1.3(c).

from California and Florida issued within the allowed time period, see ECF Nos. 110-2, 110-3; and filed the required affidavit with all necessary components, see ECF No. 110-1.

Whether the Hayes Clients may intervene as parties in this action to request mediation and whether Mr. Hayes may obtain pro hac vice admission, however, are two distinct issues. In the guise of a pro hac vice motion, Mr. Hayes seeks for the Hayes Clients “to appear in the limited capacity of requesting mediation pursuant to Paragraph 4 of the Amended Monitor Order, and to appear at such mediation,” see ECF No. 115 at 1 (citations omitted), which implies that he seeks leave for the Hayes Clients to intervene as parties in the action. This procedural relief is improperly sought in the motion via the pro hac vice admission.

If the Hayes Clients were to make a proper motion, the Court could then address Mr. Hayes’s lack of admission to practice law before this Court by a simultaneously filed motion for pro hac vice admission. Such a motion is a common request that is routinely granted upon satisfaction of the applicable requirements.<sup>3</sup> On the motion for pro hac vice admission, the Court declines to consider the propriety of the procedural relief requested by the Hayes Clients, namely whether the Hayes Clients are proper parties in the action. The Court particularly declines to allow this circumvention of the regular motion practice because the rights and status of the Hayes Clients, if any, are intertwined with the crux of significant pending motion practice, see ECF Nos. 79, 88, namely control of GPB.

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<sup>3</sup> To highlight the impropriety of the procedure employed by Mr. Hayes, the Court has considered that an attorney admitted to practice before this Court would be unable to pursue the same path of bringing a backdoor motion to intervene. For an admitted attorney to file a motion for pro hac vice admission would be nonsensical; rather, an admitted attorney would need to file a motion to intervene in order to seek the procedural relief sought in the purported motion for pro hac vice admission. While pro hac vice admission is a courtesy regularly extended to attorneys not admitted to practice before this Court, the Court will not endorse its exploitation to obtain substantive relief, particularly in a manner unavailable to and to the disadvantage of admitted attorneys.

The motion for pro hac vice admission, see ECF No. 110, is denied without prejudice.

Dated: Brooklyn, New York  
March 13, 2023

*Vera M. Scanlon*  
VERA M. SCANLON  
United States Magistrate Judge