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## STATE OF VERMONT

SUPERIOR COURT  
Chittenden Unit

CIVIL DIVISION  
Docket No. 774-8-19 Cncv

Gardner et al vs. Vermont Mutual Insurance Company
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### ENTRY REGARDING MOTION

Count 1, Breach of Contract (774-8-19 Cncv)

Title: Motion for Admission Pro Hac Vice (J. Dabney) (Motion 8)  
Filer: Virginia Gardner and Howard Malovany  
Attorney: Andrew D. Manitsky  
Filed Date: October 25, 2019

No response filed

Attorney Manitsky moves for permission to have attorney James Dabney—a partner at Hughes, Hubbard & Reed in Manhattan—appear pro hac vice in this case. Such motions are entirely “in the discretion of the court.” V.R.C. P. 79.1(e); *see also*, Jacob Stein, *The Law of Law Firms* § 11:2 (2d) (“Attorneys have no right to this admission, and the admission decision is left to the discretion of the court before which the attorney is appearing.”).

This court is currently handling three separate pending cases—including this one—involving warring factions of owners of condominium units in the upscale Shelburne Cliffs Condominium Association. Mr. Dabney is the husband of one of the litigants in all three cases, Virginia Gardner. He was lead counsel at a jury trial in the first of the three cases, Docket 1007-10-17, and the court had the opportunity to observe his demeanor as counsel in the courtroom. He was overly emotional in that role, to the detriment of his

clients before the jury. In addition, based upon his testimony at a hearing in one of the other cases yesterday, he now owns two units in the Association. Moreover, he is named as party in the most recent of these overlapping cases, Docket 1117-12-19 Cncv.

Finally, at the hearing in Docket 1117-12-19 yesterday, Mr. Dabney testified that he had a contingency fee agreement in the case in which he has been appearing pro hac vice—Docket 1007-10-17—but that the agreement was not in writing. That would appear to be a violation of the Vermont Rules of Professional Conduct. V.R. P.C. 1.5(c) (“A contingent fee arrangement shall be in a writing signed by the client. . .”). While the clients were his wife and a friend, “[t]he rule language is mandatory, directing that a contingent fee agreement ‘shall’ be in writing, without exception.” In re Fink, 2011 VT 42, ¶ 17, 189 Vt. 470.

Based upon all of the above, the court concludes that it would be inappropriate to allow Mr. Dabney to appear as counsel in this case. First, the court is concerned about his compliance with the rules of professional conduct. Second, he is too personally invested in these matters to serve as dispassionate counsel for the parties.

#### Order

The motion to permit James Dabney to appear pro hac vice is denied.

Dated at Burlington this 7th day of January, 2020.

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Helen M. Toor  
Superior Court Judge

#### Notifications:

Andrew D. Manitsky (ERN 1078), Attorney for Plaintiff Virginia Gardner  
Andrew D. Manitsky (ERN 1078), Attorney for Plaintiff Howard Malovany  
Andrew C. Boxer (ERN 1018), Attorney for Defendant Vermont Mutual Insurance Company  
Richard J. Windish (ERN 3044), Attorney for Defendant Chad Hansen  
Richard J. Windish (ERN 3044), Attorney for Defendant Janice Hokenson

Susan J. Flynn (ERN 3111), Attorney for Interested Person Shelburne Cliffs Condominium  
Russell D. Barr (ERN 5782), Attorney for party 6 Co-Counsel