

STATE OF WISCONSIN COURT OF APPEALS DIST. IV

In the Matter of the Rehabilitation of:

**SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION**

**Appeal of the United States of America:
Appeal No. 2011AP516**

**MOTION FOR WAIVER OF THE SIGNATURE AND FEE
REQUIREMENTS OF SUPREME COURT RULE 10.03(4)**

The United States, the appellant in the above-captioned appeal, through its counsel Richard Humphrey and Anthony T. Sheehan, moves for the waiver of the provisions in Wisconsin Supreme Court Rule 10.03(4), requiring: (1) that all papers filed in the Court bear the signature of an attorney licenced to practice in Wisconsin, and (2) the payment of \$50 to the Office of Lawyer Regulation in connection with a verified application to appear *pro hac vice*. The reasons for this motion are as follows.

1. This is an appeal by the United States of America in the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation (Dane County Circuit Ct. – No. 10cv1576)

from the final judgment entered on January 24, 2011, confirming the rehabilitator's plan of rehabilitation.

2. Mr. Humphrey is an Assistant United States Attorney in the Office of the United States Attorney for the Western District of Wisconsin. He is licensed to practice law in Wisconsin, and his Wisconsin bar number is 1016934.

3. Mr. Sheehan is an attorney in the Appellate Section of the Tax Division of the United States Department of Justice. He is licensed to practice law in Illinois, and his Illinois bar number is 6210019. Mr. Sheehan has been assigned by his supervisors in the Tax Division to represent the United States in this appeal. Mr. Humphrey has entered an appearance in this case and has moved for Mr. Sheehan's admission *pro hac vice*.

4. Mr. Sheehan has also been assigned to represent the United States in two related appeals pending in the United States Court of Appeals for the Seventh Circuit, *viz.*, *Nickel v. United States* (7th Cir. – No. 11-1158) and *United States v. Wisconsin State Circuit Court for Dane County; et al.* (7th Cir. –

No. 11-1419). Because of his involvement with those appeals, Mr. Sheehan is more familiar with the facts and issues in these cases than is Mr. Humphrey, and Mr. Sheehan will be preparing the papers to be filed by the United States in this Court.

5. Wisconsin Supreme Court Rule 10.03(4)(a) states that only active members of the Wisconsin bar may practice law in Wisconsin. Wisconsin Supreme Court Rule 10.03(4)(b) allows nonresident counsel to appear *pro hac vice* in a particular action or proceeding in association with an active Wisconsin attorney who also appears and participates in the proceeding. We have been informed that, under those rules, the Wisconsin attorney must sign papers to be filed in the Court. Wisconsin Supreme Court Rule 10.03(4)(b)2 requires the payment of a \$50 fee to the Office of Lawyer Regulation for each application for admission *pro hac vice*.

6. Federal law charges attorneys in the United States Department of Justice with the duty to conduct litigation on behalf of the United States in every forum in which the interests

of the United States are at stake. Congress has specifically authorized the Attorney General to send “any officer of the Department of Justice . . . to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State” 28 U.S.C. § 517. Congress has also provided that “the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, . . . is reserved to officers of the Department of Justice, under direction of the Attorney General.” 28 U.S.C. § 516; *see also* 28 U.S.C. § 515(a) (authorizing Justice Department attorneys to “conduct any kind of legal proceeding, civil or criminal, . . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought”).

7. Under the Supremacy Clause of the Constitution, U.S. Const. Art. VI, cl. 2, the operations of the federal government are exempt from state regulation. *See Hancock v. Train*, 426 U.S. 167, 178–80 (1976). In this regard, the Supreme Court of the

United States has held that where “governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation,” the United States enjoys its inherent freedom as sovereign to be free from state regulation and taxation. *Mayo v. United States*, 319 U.S. 441, 446–48 (1943); *see also Sperry v. Florida*, 373 U.S. 379, 403–04 (1963) (individual licensed to prepare patent applications could not be required to become member of state bar, because that would interfere with federal power over patent rights).

8. Under this analysis, the requirement that Mr. Humphrey sign filings on behalf of the United States, in addition to Mr. Sheehan, would be an impermissible restriction on the authority of the Attorney General under the above-cited federal statutes to assign Mr. Sheehan to represent the interests of the United States in this appeal. The interest of this Court in protecting the integrity of its process are properly served by the facts that Mr. Sheehan will be representing the United States

under the supervision of senior attorneys in the Department of Justice, that he has submitted to the jurisdiction of this Court over his professional conduct, and that he has agreed to abide by the Rules of Professional Conduct for Attorneys and by the Rules of this Court. Requiring an additional signature by Mr. Humphrey (who has not had significant involvement in the Ambac matter to date) will only add to the United States' administrative burden.

9. Finally, the fee requirement of Rule 10.03(4)(b)2, when imposed upon an attorney representing the United States, effectively constitutes a “money exaction[] the payment of which, if [it is] enforceable, would be required before executing a function of government. Such a requirement is prohibited by the supremacy clause” *Mayo*, 319 U.S. at 447.

For the foregoing reasons, we respectfully request that the Court waive the signature and fee requirements of Wisconsin Supreme Court Rule 10.03(4) in this case.

Respectfully submitted,

/s/ Richard D. Humphrey

/s/ Anthony T. Sheehan

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Dated this 21st day of March, 2011.

March 22, 2011

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AMBAC ASSURANCE CORPORATION**

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DECLARATION

Anthony T. Sheehan, of the Department of Justice,
Washington, D.C., states as follows:

1. I am an attorney employed in the Appellate Section, Tax Division, United States Department of Justice.
2. The facts recited in the foregoing motion are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 22d day of March, 2011, in Washington, D.C.

/s/ Anthony T. Sheehan

ANTHONY T. SHEEHAN
Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on this 22d day of March, 2011, that a true and correct copy of the foregoing document has been served upon counsel for the Wisconsin insurance commissioner via First Class Mail, with postage prepaid, in an envelope properly addressed as follows:

Matthew R. Lynch, Esquire
Michael B. Van Sicklen, Esquire
Foley & Lardner
P.O. Box 1497
Madison, WI 53701

I further certify that a true and correct copy of the foregoing document (except for replacing handwritten dates and signatures with typed versions of the same) has been served on all counsel of record using the e-mail distribution list established by the Circuit Court for Dane County for that purpose, as listed below:

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