

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

Resolution

RESOLVED: That the American Bar Association amends the ABA Model Rule on Pro Hac Vice Admission as follows (insertions underlined, deletions ~~struck through~~):

ABA Model Rule on Pro Hac Vice Admission

I. Admission In Pending Litigation Before A Court Or Administrative Agency

A. Definitions

1. An “out-of-state” lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States, ~~or of~~ the District of Columbia or a foreign jurisdiction, and not disbarred or suspended, or the equivalent thereof, from practice in any jurisdiction.

2. a “foreign jurisdiction” is one with a recognized legal profession, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

23. An out-of-state lawyer is “eligible” for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states or foreign jurisdictions and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

34. A “client” is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.

45. An “alternative dispute resolution” (“ADR”) proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

56. “This state” refers to [state or other U.S. jurisdiction promulgating this ~~Rule~~]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court or Administrative Agency To Permit Appearance By Out-of-State Lawyer

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

48 **2. Administrative Agency Proceeding.** If practice before an
49 administrative agency of this state is limited to lawyers, the agency may, using the
50 same standards and procedures as a court, admit an eligible out-of-state lawyer who
51 has been retained to appear in a particular agency proceeding to appear as counsel
52 in that proceeding pro hac vice.

53 **C. In-State Lawyer's Duties.** When an out-of-state lawyer appears for a client
54 in a proceeding pending in this state, either in the role of co-counsel of record with
55 the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is
56 co-counsel or counsel of record for that client in the proceeding remains responsible
57 to the client and responsible for the conduct of the proceeding before the court or
58 administrative agency. It is the duty of the in-state lawyer to advise the client of the
59 in-state lawyer's independent judgment on contemplated actions in the proceeding if
60 that judgment differs from that of the out-of-state lawyer.

61 **D. Application Procedure**

62 **1. Verified Application.** An eligible out-of-state lawyer seeking to appear
63 in a proceeding pending in this state as counsel pro hac vice shall file a verified
64 application with the court or administrative agency where the proceeding litigation
65 is filed. The application shall be served on all parties who have appeared in the case
66 and the [Disciplinary Counsel lawyer regulatory authority]. The application shall
67 include proof of service. The court or administrative agency has the discretion to
68 grant or deny the application summarily if there is no opposition.

69 **2. Objection to Application.** The [Disciplinary Counsel lawyer
70 regulatory authority] or a party to the proceeding may file an objection to the
71 application or seek the court's or administrative agency's imposition of conditions
72 to its being granted. The [Disciplinary Counsel lawyer regulatory authority] or
73 objecting party must file with its objection a verified affidavit containing or
74 describing information establishing a factual basis for the objection. The
75 [Disciplinary Counsel lawyer regulatory authority] or objecting party may seek
76 denial of the application or modification of it. If the application has already been
77 granted, the [Disciplinary Counsel lawyer regulatory authority] or objecting party
78 may move that the pro hac vice admission be withdrawn.

79 **3. Standard for Admission and Revocation of Admission.** The courts
80 and administrative agencies of this state have discretion as to whether to grant
81 applications for admission pro hac vice. An application ordinarily should be granted
82 unless the court or administrative agency finds reason to believe that such
83 admission:

84 a. may be detrimental to the prompt, fair and efficient
85 administration of justice,

86 b. may be detrimental to legitimate interests of parties to the
87 proceedings other than the client(s) the applicant proposes to represent,

88 c. one or more of the clients the applicant proposes to represent
89 may be at risk of receiving inadequate representation and cannot adequately
90 appreciate that risk, or

91 d. the applicant has engaged in such frequent appearances as to
92 constitute regular practice in this state.

93 **4. Revocation of Admission.** Admission to appear as counsel pro hac vice
94 in a proceeding may be revoked for any of the reasons listed in Section I.D.3
95 above.

96 E. Verified Application and Fees:

97 1. Required Information. An application shall state the information
98 listed on Appendix A to this ~~Rule~~. The applicant may also include any other
99 matters supporting admission pro hac vice.

100 2. Application Fee. An applicant for permission to appear as counsel
101 pro hac vice under this Rule shall pay a non-refundable fee as set by
102 the ~~[court, administrative agency or other proper authority lawyer~~
103 ~~regulatory authority]~~ at the time of filing the application.

104 3. Exemption for Pro Bono Representation. An applicant shall not be
105 required to pay the fee established by I.E.2 above if the applicant will
106 not charge an attorney fee to the client(s) and is:

107 a. employed or associated with a pro bono project or nonprofit
108 legal services organization in a civil case involving the client(s)
109 of such programs: or

110 b. involved in a criminal case or a habeas proceeding for an
111 indigent defendant.

112 4. Lawyers' Fund for Client Protection. Upon the granting of a request
113 to appear as counsel pro hac vice under this Rule, the lawyer shall
114 pay any required assessments to the lawyers' fund for client
115 protection.

116 F. Authority of the ~~[Disciplinary Counsel Lawyer Regulatory Authority], the~~
117 ~~and Court, and Administrative Agency: Application of Ethical Rules of~~
118 Professional Conduct, Rules of Disciplinary Enforcement Discipline,
119 Contempt, and Sanctions

120 1. Authority Over Out-of-State Lawyer and Applicant.

121 a. During pendency of an application for admission pro hac vice
122 and upon the granting of such application, an out-of-state lawyer submits to
123 the authority of the courts or administrative agency and the jurisdiction of
124 [Disciplinary Counsel lawyer regulatory authority] of this state for all
125 conduct arising out of or relating in any way to the application or proceeding
126 in which the out-of-state lawyer seeks to appear, regardless of where the
127 conduct occurs. ~~The applicant or out-of-state lawyer who has obtained pro~~
128 ~~hac vice admission in a proceeding submits to this authority for all that~~
129 ~~lawyer's conduct (i) within the state while the proceeding is pending or (ii)~~
130 ~~arising out of or relating to the application or the proceeding.~~ An applicant
131 or out-of-state lawyer who has pro hac vice authority for a proceeding may
132 be disciplined in the same manner as an in-state lawyer.

133 b. The court's, administrative agency's and the [Disciplinary
134 Counsel's lawyer regulatory authority's] authority includes, without
135 limitation, the court's, the agency's, and the [Disciplinary Counsel's lawyer
136 regulatory authority's] rules of professional conduct, rules of disciplinary
137 enforcement, contempt and sanctions orders, local court rules, and court
138 policies and procedures.

139 2. Familiarity With Rules. An applicant shall become familiar with all
140 applicable the rules of professional conduct, rules of disciplinary enforcement of
141 the [lawyer regulatory authority], local court or administrative agency rules, and
142 policies and procedures of the court or administrative agency before which the
143 applicant seeks to practice.

- 144 **II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All**
145 **ADR**
- 146 **A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding.**
147 **In connection with proceedings pending outside this state, an out-of-state lawyer**
148 **admitted to appear in that proceeding may render in this state legal services**
149 **regarding or in aid of such proceeding.**
- 150 **B. Consultation by Out-of-State Lawyer**
- 151 **1. Consultation with In-State Lawyer.** An out-of-state lawyer may
152 **consult in this state with an in-state lawyer concerning the in-state’s lawyer’s**
153 **client’s pending or potential proceeding in this state.**
- 154 **2. Consultation with Potential Client.** At the request of a person in this
155 **state contemplating a proceeding or involved in a pending proceeding, irrespective**
156 **of where the proceeding is located, an out-of-state lawyer may consult in this state**
157 **with that person about that person’s possible retention of the out-of-state lawyer in**
158 **connection with the proceeding.**
- 159 **C. Preparation for In-State Proceeding.** On behalf of a client in this state or
160 **elsewhere, the out-of-state lawyer may render legal services in this state in**
161 **preparation for a potential proceeding to be filed in this state, provided that the out-**
162 **of-state lawyer reasonably believes he is eligible for admission pro hac vice in this**
163 **state.**
- 164 **D. Preparation for Out-of-State Proceeding.** In connection with a potential
165 **proceeding to be filed outside this state, an out-of-state lawyer may render legal**
166 **services in this state for a client or potential client located in this state, provided that**
167 **the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for**
168 **admission generally or pro hac vice in the jurisdiction where the proceeding is**
169 **anticipated to be filed.**
- 170 **E. Services Rendered Outside This State for In-State Client.** An out-of-state
171 **lawyer may render legal services while the lawyer is physically outside this state**
172 **when requested by a client located within this state in connection with a potential or**
173 **pending proceeding filed in or outside this state.**
- 174 **F. Alternative Dispute Resolution (“ADR”) Procedures.** An out-of-state lawyer
175 **may render legal services in this state to prepare for and participate in an ADR**
176 **procedure regardless of where the ADR procedure is expected to take or actually**
177 **takes place.**
- 178 **G. No Solicitation.** An out-of-state lawyer rendering services in this state in
179 **compliance with this Rule or here for other reasons is not authorized by anything in**
180 **this ~~Rule~~ to hold out to the public or otherwise represent that the lawyer is**
181 **admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state**
182 **lawyers to solicit, advertise, or otherwise hold themselves out in publications as**
183 **available to assist in litigation in this state.**
- 184 **H. Temporary Practice.** An out-of-state lawyer will ~~only~~ be eligible for
185 **admission pro hac vice or to practice in another lawful way only on a temporary**
186 **basis.**
- 187 **I. Authorized Services.** The foregoing services may be undertaken by the out-of-
188 **state lawyer in connection with a potential proceeding in which the lawyer**
189 **reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is**
190 **filed or if pro hac vice admission is denied.**

APPENDIX A

The out-of-state lawyer's verified application for admission pro hac vice shall include:

1. the applicant's residence and business address, telephone number(s), and e-mail address(es);
2. the name, address, ~~and~~ telephone number(s), and e-mail address(es) of each client sought to be represented;
3. the U.S. and foreign jurisdictions in, and administrative agencies and courts before which the applicant has been admitted to practice, the contact information for each, and the respective period(s) of admission;
4. the name and address of each court or administrative agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years and the date of each application;
5. a statement as to whether, within the last [five (5)] years, the applicant (a) has been denied admission pro hac vice in any jurisdiction, U.S. or foreign, including this state, (b) has ever had admission pro hac vice revoked in any jurisdiction, U.S. or foreign, including this state, or (c) has otherwise ever formally been disciplined or sanctioned by any court or administrative agency in any jurisdiction, U.S. or foreign, including this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings. (A certified copy of the written finding or order shall be attached to the application. If the written finding or order is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation);
56. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary counsel or analogous foreign regulatory authority in any other jurisdiction within the last [five (5)] years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated, which, if any, of the proceedings are still pending, and, for those proceedings that are not still pending, the dates upon which the proceedings were finally concluded; the style caption of the proceedings; and the findings made and actions taken in connection with those proceedings, including exoneration from any charges. (A certified copy of any written order or findings shall be attached to the application. If the written order or findings is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation.);
67. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order in the last [five (5)] years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings. (A copy of the written order or transcript of the oral rulings shall be attached to the application. If the

- 239 written finding or order is not in English, the applicant shall submit an
240 English translation and satisfactory proof of the accuracy of the translation);
241 ~~7. the name and address of each court or agency and a full identification of each~~
242 ~~proceeding in which the applicant has filed an application to appear pro hac~~
243 ~~vice in this state within the preceding two years; the date of each application;~~
244 ~~and the outcome of the application;~~
245 8. an averment as to the applicant's familiarity with the rules of professional
246 conduct, rules of disciplinary enforcement of the [lawyer regulatory
247 authority], local or administrative agency rules, and court policies and
248 procedures of the court or administrative agency before which the applicant
249 seeks to practice; and
250 9. the name, address, telephone number(s), e-mail address(es), and bar number
251 of ~~an~~ the active member in good standing of the bar of this state who ~~will~~
252 ~~sponsor~~ supports the applicant's pro hac vice request, who ~~The bar member~~
253 ~~shall appear of record together with the out-of-state lawyer, and who shall~~
254 ~~remain ultimately responsible to the client as set forth in Paragraph C of this~~
255 Rule.
256 ~~10. for applicants admitted in a foreign jurisdiction, an averment by the in-state~~
257 ~~lawyer referred to in Paragraph 9 above and by the lawyer admitted in a~~
258 ~~foreign jurisdiction that, if the application for pro hac vice admission is~~
259 ~~granted, service of any documents by a party or Disciplinary Counsel upon~~
260 ~~that foreign lawyer shall be accomplished by service upon the in-state lawyer~~
261 ~~or that in-state lawyer's agent.~~
262 ~~1011.~~ Optional: the applicant's prior or continuing representation in other matters
263 of one or more of the clients the applicant proposes to represent and any
264 relationship between such other matter(s) and the proceeding for which
265 applicant seeks admission.
266 ~~1112.~~ Optional: any special experience, expertise, or other factor deemed to make
267 it particularly desirable that the applicant be permitted to represent the
268 client(s) the applicant proposes to represent in the particular cause.

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Report

Introduction

In August 2002, the ABA House of Delegates adopted the Model Rule on Pro Hac Vice Admission as part of the package of policies proposed by the Commission on Multijurisdictional Practice. The Model Pro Hac Vice Rule was developed cooperatively by the ABA Section of Litigation and the ABA Tort Trial and Insurance Practice Section and provided to the MJP Commission for inclusion in its package of proposals. The Model Rule currently applies only to U.S. lawyers. For the reasons described below, the ABA Commission on Ethics 20/20 requests that the House of Delegates adopt amendments to the ABA Model Rule on Pro Hac Vice Admission to include foreign lawyers.

Why U.S. Clients Choose Foreign Lawyers

As communications and commerce have become increasingly globalized so too have clients, their families, businesses, and other assets. As a result, there has been a concomitant increase in litigation in U.S. courts implicating parties, property and businesses located in other countries. Foreign-born residents have family law, estate planning, and business relationships with their countries of origin or the countries of origin of their spouses or business associates. Foreign-owned companies also are involved in multinational litigation that involves U.S. courts. Cases can range from complex, international mass torts to those involving individual parties with international child custody or estate law issues.

Under these circumstances, clients frequently seek the involvement of both U.S. and foreign lawyers and thus, when appropriate, want foreign lawyers of their choosing to appear *pro hac vice* along with their U.S. counsel. Such foreign lawyers often have more knowledge and expertise than their U.S. counterparts regarding the international law issues at stake, and in the case of organizational clients, possess intimate knowledge of their clients' businesses. Foreign lawyers also have knowledge about a country's language, culture, and customs that may help U.S. courts, lawyers, and juries better understand a litigant's position. For example, the Commission heard that it is not uncommon for family law practitioners to have cases that cross international boundaries, necessitating involvement by and coordination with foreign lawyers in order to provide the full panoply of required legal services. Lawyers who practice in the areas of trust and estate law, real estate law, and intellectual property law, are similarly affected.

Data Supporting the Inclusion of Foreign Lawyers Within the Pro Hac Vice Rule

The Commission's proposal to include foreign lawyers within the Model Rule on Pro Hac Vice Admission is not without precedent. In 1993, when the ABA House of

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September 19, 2011

Delegates adopted the Model Rule for Licensing of Legal Consultants (now the Model Rule for the Licensing and Practice of Foreign Legal Consultants), it recognized that a state may want to admit foreign lawyers *pro hac vice*.¹ Currently, at least fourteen states permit *pro hac vice* admission by foreign lawyers.² The U.S. Virgin Islands also permits foreign lawyers to appear *pro hac vice* in its courts. The Commission did not learn of any problems arising out of these procedures.

Moreover, U.S. trade flow and census data demonstrate the reality of an increasingly international client base and the need for the legal profession, with sufficient safeguards, to accommodate their needs and choice of counsel in transactional matters and in litigation. For example, in 2009, the U.S. exported \$1.570 trillion in goods and services, and imported \$1.946 trillion.³ In 2010, the U.S. exported \$1.831 trillion in goods and services and imported \$2.329 trillion.⁴ In 2009, the U.S. exported \$7.26 billion in legal services and imported \$1.7 billion.⁵ In 2007, there were \$2.129 trillion in foreign-owned assets in the U.S. and \$1.472 trillion in U.S.-owned assets abroad.⁶ While these numbers have decreased due to the global economic crisis, they are still significant. Indeed, during the first three quarters of 2010 there were \$988 billion in foreign-owned assets in the U.S. and \$767 billion in U.S. - owned assets abroad.⁷ These numbers reflect the extent to which various kinds of legal issues can implicate international law or the law of other nations.

The U.S. Census Bureau provides a variety of demographic information about the foreign-born population in this country. These citizens are particularly likely to have

¹ Section 4(a) of the 1993 Model Rule for the Licensing of Legal Consultants provided that such consultant cannot “appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State (other than upon admission *pro hac vice* pursuant to [citation of applicable rule])” Section 3(a) of the current Model Rule for the Licensing and Practice of Foreign Legal Consultants provides that the foreign legal consultant cannot “appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted *pro hac vice* pursuant to [citation of applicable rule]). See, http://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/model_rule_licensing_foregn.authcheckdam.pdf.

² See, American Bar Association Center for Professional Responsibility Comparison Chart of ABA Model Rule for Pro Hac Vice Admission With State Versions and Amendments Since 2002 (last updated July 18, 2011), at http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_comp.authcheckdam.pdf. In March 2011, the State Bar of Georgia Board of Governors approved a proposal to amend that state’s *pro hac vice* rule to include foreign lawyers and submitted a proposal to the Superior Court requesting that it amend Rule 4.4 of its Uniform Superior Court Rules accordingly. That proposal was still pending at the time this Report was prepared.

³ <http://www.bea.gov/newsreleases/international/transactions/transnewsrelease.htm> and accompanying tables.

⁴ See, U.S. INTERNATIONAL TRADE IN GOODS AND SERVICES, December 2010, at <http://www.bea.gov/newsreleases/international/trade/2011/trad1210.htm>.

⁵ See, http://www.bea.gov/international/xls/table_G.xls and http://www.bea.gov/international/xls/table_H.xls.

⁶ See, <http://www.bea.gov/international/ai1.htm>, Annual Revision of the U.S. International Accounts | SCB, July 2009

⁷ Supra note 6.

legal needs that require the assistance of foreign counsel. As noted above, they frequently have family law, real estate, trust and estate issues that arise in their countries of origin. U.S. Census data from 2000 shows that the foreign-born population in the U.S. was 31,107,899. Between 1990 and 2000, every jurisdiction had at least a 19% increase in its foreign-born population, and every jurisdiction except five had at least a 30% increase.⁸ Nineteen states saw an increase of more than 100%.⁹ States with the largest percentage increases were: Alabama, Arizona, Arkansas, Delaware, Georgia, Idaho, Iowa, Kansas, Kentucky, Mississippi, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee and Utah.¹⁰

In 2009, the total U.S. population was 301,483,000; of that number 36,750,000 (or approximately 12%) were foreign born.¹¹ This number represents an increase of 5,642,101 foreign-born residents from 2000. According to the U.S. Census Bureau's 2011 Statistical Abstract, the 2008 American Community Survey showed that in California, Florida, Nevada, Massachusetts, Washington State, and Rhode Island, the percentage of the total state population comprised of foreign-born residents was 26.8%, 18.5%, 18.9%, 14.4%, 12.3%, and 12.2% respectively.¹² Data that year for the 25 largest U.S. cities shows that, for example, foreign-born residents comprised 14.5% of the population in Charlotte, North Carolina; 11.3% of the population in Nashville, Tennessee; and 20% of the population in Austin, Texas.¹³ These numbers reflect the extent to which American residents are likely to have legal needs that implicate international law or the law of other nations and that would benefit from the retention of foreign counsel to work with a U.S.-licensed lawyer on a *pro hac vice* basis.

Protections for Clients, the Courts, and the Public

The ABA Commission on Ethics 20/20 believes that the realities of an increasingly borderless world and the needs of clients support the amendment of the ABA Model Rule for Pro Hac Vice Admission to provide U.S. courts with a template by which, if they choose, they can allow a foreign lawyer to participate in a U.S. state court or administrative agency proceeding *pro hac vice*.

The Commission's proposed amendments provide adequate safeguards for clients, courts, and the public. They include:

⁸ The Foreign-Born Population: 2000, Census 2000 Brief at 3 (Dec. 2003), <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf> and http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF3_DP2&prodType=table.

⁹ Id.

¹⁰ Id.

¹¹ See, Table 40 Native and Foreign –Born Populations by Selected Characteristics: 2009, <http://www.census.gov/compendia/statab/2011edition.html>.

¹² See, Table 38, Native and Foreign Born Population by State 2008, <http://www.census.gov/compendia/statab/2011edition.html>.

¹³ See, Table 39 Nativity and Place of Birth of Resident Population—25 Largest Cities: 2008, <http://www.census.gov/compendia/statab/2011edition.html>.

1. Authorization to practice *pro hac vice* does not constitute full admission to the practice of law in the jurisdiction in which the foreign lawyer would seek this privilege; it is a form of supervised limited practice authorization for a particular matter;
2. The foreign lawyer would be of the client's choosing;
3. Granting *pro hac vice* requests is **entirely discretionary**. To assist the judge in exercising his or her discretion in these matters, the foreign lawyer must make full disclosure of his or her *pro hac vice* and disciplinary history. The Model Rule provides that the judge may deny the request if, for example, the judge believes that the *pro hac vice* admission would be detrimental to the prompt, fair and efficient administration of justice; detrimental to legitimate interests of parties to the proceedings other than the client(s); one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or the applicant has engaged in such frequent appearances as to constitute regular practice in the state. The judge can revoke the *pro hac vice* authorization for the same reasons.
4. The foreign lawyer applying for *pro hac vice* authorization bears the burden of demonstrating to the judge and to local counsel (who must support that application) that the authorization is warranted. Moreover, under the Model Rule, Disciplinary Counsel and an opposing litigant may object to the application.¹⁴
5. Local counsel must be of record and responsible to the client and tribunal for the conduct of the proceeding. State courts have elaborated on the extent of local counsel's gatekeeping responsibilities and the extent to which local counsel will be held accountable. Local counsel is required to advise the client of their independent judgment on contemplated actions in the proceeding if that judgment differs from that of the foreign co-counsel admitted *pro hac vice*.
6. The foreign lawyer would be required to contribute to the jurisdiction's lawyers' fund for client protection.
7. The foreign lawyer applicant is required to state, under penalty of perjury, that he or she is familiar with and will comply with all applicable rules of professional conduct and rules of the court or agency involved.
8. That foreign lawyer is subject to the disciplinary jurisdiction of the court before which *pro hac vice* admission has been granted and the jurisdiction's lawyer disciplinary authority. Because the foreign applicant will be required to provide contact information for all the U.S. and foreign jurisdictions in, and administrative agencies and courts before which the foreign lawyer has been

¹⁴ For example, according to the 2010 Report of the Office of General Counsel to the Board of Governors of the State Bar of Georgia, between May 1, 2009 through April 30, 2010, the Office of the General Counsel reviewed 763 *pro hac vice* applications; it objected to only fourteen of them.

admitted to practice, the court and disciplinary counsel can easily report any misconduct to the lawyer’s home licensing authority.

Before making this recommendation the Commission’s Working Group on Inbound Foreign Lawyers conducted research and carefully vetted arguments raised in favor of and opposition to adding foreign lawyers to the Model Pro Hac Vice Rule. In addition to members of the Commission, members from the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Standing Committee on Professional Discipline, the Section of International Law, the Real Property, Trust and Estate Law Section, the Task Force on International Trade in Legal Services, and the Section of Legal Education and Admissions to the Bar actively participated in and contributed to the Working Group’s deliberations. In response to the Working Group’s recommendation that the Commission propose amendments to the Model Pro Hac Vice Rule, the Commission disseminated in June 2010 templates and memoranda developed by the Working Group illustrating and explaining the basis for those suggested changes.

Subsequent to that circulation the Commission received Conference of Chief Justices’ Resolution 13, dated July 28, 2010. That resolution was proposed to the Conference by its Task Force on the Regulation of Foreign Lawyers and the International Practice of Law at the Conference of Chief Justices’ 2010 Annual Meeting. In that resolution, the Conference endorsed in principle the changes proposed by the Commission to add foreign lawyers to the Model Rule on Pro Hac Vice Admission and urges their adoption by the ABA House of Delegates.¹⁵

At subsequent meetings, the Commission on Ethics 20/20 considered additional written responses and oral testimony on the subject. The members took seriously concerns raised in responses to the template and memorandum, in particular those who expressed concern regarding the qualifications of foreign lawyers who would appear *pro hac vice* in U.S. state courts. The Commission, however, did not learn of any problems that have arisen with regard to *pro hac vice* admission of foreign lawyers in those U.S. jurisdictions that already permit this practice. Further, the Commission believes that the multiple layers of safeguards described above provide adequate protection to the courts, litigants, and the public. At its April 2011 meeting, the Commission endorsed the Working Group’s recommendation.

Explanation of Proposed Amendments to the ABA Model Rule on Pro Hac Vice Admission

To enhance substantive clarity and consistency within the Model Rule, the Commission proposes adding the term “administrative” before “agency.” The Model Rule as originally adopted uses the terms “agency” and “administrative agency” interchangeably. Other changes to the Model Rule and Appendix A are intended to bring the Rule’s terminology in line with other ABA policies. For example, the Commission proposes use of the term “Disciplinary Counsel” instead of “lawyer regulatory authority,” “Rules of Professional Conduct” instead of “ethical rules,” and “Rules of Disciplinary

¹⁵ See, <http://ccj.ncsc.dni.us/InternationalResolutions/resol13ABA.html> (last viewed March 2, 2011).

Enforcement” instead of “rules of discipline.” Changes in Paragraph I.F. 1(a) are intended to increase clarity and eliminate redundancy.

The proposed definition of “foreign jurisdiction” in Paragraph A(2) of the Model Rule is taken from the ABA Model Rule for Licensing of Foreign Legal Consultants and the ABA Model Rule for Temporary Practice by Foreign Lawyers. The foreign lawyer must be a member in good standing of a recognized legal profession in the lawyer’s home country, and the members of that profession must be subject to effective regulation and discipline by a duly constituted professional body or public authority. Use of this definition limits the types of foreign lawyers who can seek to be admitted *pro hac vice* in a manner that is protective of the public and clients; it prohibits any individual who may use the title “lawyer” from qualifying to apply for *pro hac vice* admission. The ABA definition of foreign jurisdiction or foreign lawyer has been adopted by the courts, and the Commission is not aware of any problems that have arisen from its use.

The Commission recommends requiring all lawyers registered under the Rule, domestic or foreign, to pay any annual client protection fund assessment. Language to this effect has been added to Paragraph I.E.(4) of the Rule. This requirement ensures that the provisions of the Model Pro Hac Vice Rule are consistent with Rule 1 (B)(2) of the ABA Model Rules for Lawyers’ Funds for Client Protection.¹⁶

The Commission recommends reorganizing the order of items in Appendix A of the Rule (required information for the verified application) to improve logical flow and provide better substantive guidance. Other suggested changes, such as including e-mail addresses and telephone numbers, will increase the ease with which those investigating, granting or denying the application can communicate with the applicant and others who may have relevant information. The same is true of the Commission’s recommendation to amend the Model Pro Hac Vice Rule to require the applicant to provide certified copies of requested court, agency or disciplinary orders.

Paragraph 3 of the Verified Application in Appendix A ensures that the judge and others on whom the Verified Application is served are provided with the identity of and contact information for the foreign courts and agencies before which the foreign lawyer is authorized to practice. Requiring a foreign lawyer to provide the contact information will facilitate any need to make inquiry of authorities in the lawyer’s home country and to notify the home country authorities in the event of misconduct by the foreign lawyer. Any such notification would supplement any disciplinary action or sanctions that may be imposed by the U.S. courts, agencies and disciplinary authorities.

The Ethics 20/20 Commission also recommends that Appendix A to the Model Rule be amended to require that the foreign lawyer provide accurate English translation(s) of any documents demonstrating his or her admission to practice and good standing as a lawyer in any foreign jurisdictions. This requirement would mirror that in the ABA Model Rule for Licensing and Practice of Foreign Legal Consultants.

¹⁶ See, http://www.americanbar.org/groups/professional_responsibility/resources/client_protection/rule1.html.

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Proposed amendments in Paragraphs 5, 6, and 7 of Appendix A to the Model Rule relate to time limitations for disclosure of previous denials of requests for *pro hac vice* admission, revocation of *pro hac vice* admission, and concluded and pending disciplinary proceedings. The five year period is suggested, but bracketed, to indicate that jurisdictions may impose whatever time limitations they deem appropriate. These changes would apply equally to U.S. and foreign lawyers and are intended to ensure internal consistency within the Rule.

The proposed amendments to Paragraph 9 of Appendix A are intended to highlight the responsibilities of local counsel. New Paragraph 10 would require the foreign lawyer applicant and local counsel to agree that service of any documents upon the foreign lawyer can be accomplished by service on local counsel or that lawyer's agent. This requirement will help ensure accountability of foreign lawyers admitted *pro hac vice*.

Conclusion

These proposed amendments to the ABA Model Rule on Pro Hac Vice Admission provide U.S. jurisdictions with a balanced approach to this issue that meets the needs of 21st Century clients and counsel while providing adequate safeguard for the courts, the profession, and the public. The Commission on Ethics 20/20 respectfully requests that the House of Delegates approve the amendments to the Model Rule.