

MODEL RULE ON *PRO HAC VICE* ADMISSION
Jointly Proposed by ABA Sections of Litigation and Tort & Insurance Practice
and by International Association of Defense Counsel
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I. Admission in Pending Litigation Before a Court or Agency

A. Definitions

1. An “**out-of-state**” attorney is a person not admitted to the bar of this state but who is a member in good standing of the bar of any United States District Court or of the highest court of any state, territory, or insular possession of the United States or of the District of Columbia.
2. An out-of-state attorney is “**eligible**” for admission *pro hac vice* if that attorney:
 - a. lawfully practices solely on behalf of the attorney’s employer and its commonly owned organizational affiliates, regardless of where such attorney 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 and (ii) practices no more than temporarily in this state, whether pursuant to admission *pro hac vice* or in other lawful ways.
3. A “**client**” is a person or entity for which the out-of-state attorney has rendered services or by whom the attorney has been retained prior to the attorney’s performance of services in this state.
4. 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.
5. “**This state**” refers to the [*state or other 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 this rule.

B. Authority of Court or Agency To Permit Appearance By Out-Of-State Attorney and In-State Lawyer’s Duties Generally

1. **Court Proceeding.** A court of this state may, in its discretion, admit an eligible out-of-state attorney retained to appear in a particular proceeding pending before such court to appear *pro hac vice* as counsel in that proceeding.
2. **Administrative Agency Proceeding.** If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding *pro hac vice*.

3. **In-State Lawyer's Duties.** When an out-of-state attorney appears for a client in a proceeding pending in this state, either in the role as an attorney of record, or in an advisory or consultative role, any in-state lawyer for that client in the proceeding remains responsible to the client and remains responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client in the suit of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state attorney.

C. Application Procedure

1. **Verified Application.** An eligible out-of-state attorney seeking to appear in a proceeding pending in this state as counsel *pro hac vice* shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the [lawyer regulatory authority]. [The entity that regulates the conduct of attorneys should be mentioned by name in the rule whenever the term "lawyer regulatory authority" is included in this mode rule.]. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. **Objection to Application.** The [lawyer regulatory authority] may file an objection to the application or seek the court's imposition of conditions to its being granted. The [lawyer regulatory authority] or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The [lawyer regulatory authority] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [lawyer regulatory authority] may move that the *pro hac vice* admission be withdrawn.

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

- a. may be detrimental to the prompt, fair and efficient administration of justice,
- b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,
- c. 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
- d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

4. **Revocation of Admission.** Admission to appear as counsel *pro hac vice* in a suit may be revoked for any of the reasons listed in Section I.C.3 above.

D. Application

1. **Required Information.** An application shall state the information listed on Appendix A to this rule. The applicant may also include any other matters supporting admission *pro hac vice*.
2. **Application Fee.** An applicant for permission to appear as counsel *pro hac vice* under this rule shall pay a non-refundable fee as set by the [lawyer regulatory authority] at the time of filing the application.

E. Authority of the [Lawyer Regulatory Authority] and Court: Application of Ethical Rules, Discipline, Contempt and Sanctions

1. Authority Over Out-of-State Attorney and Applicant.

- a. During pendency of an application for admission *pro hac vice* and upon the granting of such application, an out-of-state attorney submits to the authority of the courts and the [lawyer regulatory authority] of this state for all conduct relating in any way to the proceeding in which out-of-state attorney seeks to appear. The applicant or out-of-state attorney who has obtained *pro hac vice* admission in a proceeding submits to this authority for all that attorney's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or out-of state attorney who has *pro hac vice* authority for a proceeding may be disciplined in the same manner as an in-state lawyer.
- b. The courts' and [lawyer regulatory authority's] authority includes, without limitation, the courts' and [lawyer regulatory authority's] rules of professional conduct, rules of discipline, contempt and sanctions orders, local court rules, and court policies and procedures.

2. **Familiarity With Rules.** An applicant shall become familiar the rules of professional conduct, rules of discipline of the [lawyer regulatory authority], local court rules, and policies and procedures of the court before which the applicant seeks to practice.

II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All ADR

A. **In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding.** In connection with proceedings pending outside this state, an out-of-state attorney admitted to appear in that proceeding may render in this state legal services regarding or in aid of such proceeding.

B. Consultation by Out-of-State Attorney

1. **Consultation with In-State Lawyer.** An out-of-state attorney may consult in this state with an in-state lawyer concerning the in-state's lawyer's client's pending or potential proceeding in this state.
2. **Consultation with Potential Client.** At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state attorney may consult in this state with that

person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

- C. **Preparation for In-State Proceeding.** On behalf of a client in this state or elsewhere, the out-of-state attorney may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out of state attorney reasonably believes he is eligible for admission *pro hac vice* in this state.
- D. **Preparation for Out-of-State Proceeding.** In connection with a potential proceeding to be filed outside this state, an out-of-state attorney may render legal services in this state for a client or potential client located in this state, provided that the out of state attorney is admitted or reasonably believes he is eligible for admission generally or *pro hac vice* in the jurisdiction where the proceeding is anticipated to be filed.
- E. **Services Rendered Outside This State for In-State Client.** An out-of-state attorney may render legal services while the attorney is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed in or outside this state.
- F. **Alternative Dispute Resolution ("ADR") Procedures.** An out-of-state attorney may render legal services to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.
- G. **No Solicitation.** An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits. Nothing in this rule authorizes out-of-state attorneys to solicit, advertise, or otherwise hold themselves out in publications directed solely to this state as available to assist in litigation in this state.
- H. **Temporary Practice.** An out-of-state attorney will only be eligible for admission *pro hac vice* or to practice in another lawful way no more than temporarily in this state.

III. **NOT THE UNAUTHORIZED PRACTICE OF LAW.** The foregoing rendition of legal or other services shall not be deemed the unauthorized practice of law by the out-of-state attorney, even if ultimately no proceeding is filed or if *pro hac vice* admission is ultimately denied.

An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits.

APPENDIX A

The out-of-state attorney application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which applicant has been admitted to practice and the respective period(s) of admission;
4. whether the applicant (a) has been denied admission *pro hac vice* in this state, (b) had admission *pro hac vice* revoked in this state, or (c) has otherwise formally been disciplined or sanctioned by any court in 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;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary committee 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 and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
6. 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, 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);
7. the name and address of each court or 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; the date of each application; and the outcome of the application;
8. an averment as to the applicant's familiarity with the rules of professional conduct, rules of discipline of the [*lawyer regulatory authority*], local rules and court procedures of the court before which the applicant seeks to practice; and
9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's *pro hac vice* request. The bar member preferably will be the attorney of record for the client(s) the applicant seeks to represent.
10. **Optional:** the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.
11. **Optional:** any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

COMMENTS:

[1] Courts in all American jurisdictions regularly admit lawyers from other jurisdictions to appear as counsel pro hac vice. Such admission has been almost a matter of course when sought in conjunction with locally admitted counsel. As a result, there have been little procedural structure for addressing such applications and ruling on such applications has been entrusted solely to the discretion of the court asked to admit the lawyer. This rule seeks to provide a procedural framework, to provide standards to guide the discretion of the court, and to address ancillary issues not dealt with in traditional pro hac vice practice.

[2] The purpose of pro hac vice procedure is to permit clients to obtain the assistance of the lawyers of their choice even though the lawyers do not have the sort of regular connection with the forum state that would give them reason to seek general admission to its bar. Most lawyers who reside in or are employed in the state can reasonably be expected to seek general admission to the bar if they desire to practice there. Ordinarily, they should not need access to pro hac vice admission and should not be permitted to rely on it as an alternative to general admission.

[3] But lawyers who have just formed such a connection to the state may be permitted to seek pro hac vice admission while promptly and diligently pursuing an initial application for general admission to its bar. In-house lawyers lawfully practicing on behalf of their employers without being admitted should not be required to seek admission simply for the purpose of representing those same employers in court. Finally, lawyers residing in the state but practicing elsewhere and not practicing in the state more than temporarily or occasionally have little reason to seek local admission, especially if doing so is burdensome. Even if the lawyer's practice is not so "regular" as to warrant denial of a nonresident lawyer's application for admission pro hac vice, it may still be more than temporary or occasional and thereby render a resident lawyer ineligible.

[4] The prohibition on practice of law by those not admitted to the bar of the state is primarily intended to protect prospective clients against unskilled or unethical practitioners. A secondary purpose is to protect courts, opposing parties, witnesses, and the public generally against practitioners who might breach professional obligations that protect the administration of justice and the interests of non-clients. Pro hac vice practice gives little attention to direct assessment of the competence of those seeking admission. Reliance is placed on a combination of (a) the out-of-state lawyer's admission elsewhere, (b) the client's possession of sufficient confidence in the lawyer to go to the trouble to bring the lawyer in from another state, (c) the ability of the locally-admitted co-counsel to protect against deficiencies in the out-of-state lawyer's representation, and (d) the ability of the court to detect any obvious incompetence in the conduct of the case. Nonclients do not have the same ability as clients to protect themselves against potential improper conduct by the out-of-state lawyer. So it is necessary to give greater attention to information bearing on that lawyer's observance of the requirements of professional responsibility. Much of the information in the application is intended to assist such an assessment.

[5] The [*lawyer regulatory authority*] has special responsibilities to protect the public against unethical lawyers and special abilities to obtain information from other jurisdictions for that purpose. To permit [*the authority*] to assist the court, the applicant is required to serve the application upon it and [*the authority*] is given standing to object to the application or to seek revocation of admission once granted. Processing of applications imposes burdens on the agency, as does the potential responsibility to investigate and act on disciplinary complaints against the applicant. A fee is imposed to defray some of these costs. The court or agency to which the application is directed need not delay action on the

application to await any response by [*the authority*], but may freely reconsider any action in light of any information provided by or any objection expressed by [*the authority*].

[6] The rule assures that the applicant will have notice of and an opportunity to respond to any alleged grounds that may be relied upon to deny the application. If the propriety of admission turns on contested issues of fact, an evidentiary hearing must be held.

[7] In accordance with traditional pro hac vice practice, there is a strong presumption that the application should be granted unless there is an affirmative reason to deny it. The client should ordinarily be permitted representation by the counsel of the client's choice unless either the client is unable to appreciate evident risks of inadequate representation or there is a threat to non-client interests. (Of course, the lawyer has a duty to be sure the client understands that the lawyer is not admitted generally in the tribunal where pro hac vice admission is sought.)

[8] Clients with sufficiently extensive legal affairs that they have employee lawyers handling some or all of those affairs are better situated than most other clients, in terms both of the ability to assess a lawyer's competence and ethical standards and of the incentive to do so. They do not ordinarily require the protection of the unauthorized practice laws. The same may be said of clients who have the advice of another lawyer in retaining the applicant for pro hac vice admission.

[9] Clients have a special interest in being able to use lawyers with whom they have previously formed attorney-client relationships. Such clients have had the ability to assess the lawyer's prior work, to develop trust in that lawyer, and to educate that lawyer on client affairs, objectives, and priorities. Clients ought not lightly to be deprived of the ability to use such lawyers in proceedings in other jurisdictions.

[10] Because the primary purpose of the unauthorized practice laws is to protect clients against practitioners falling below minimum standards of competence, it would be perverse to deny a client the ability to use a lawyer with special experience or expertise beyond that of the average in-state lawyer.

[11] While a lawyer admitted pro hac vice is subject to contempt, discipline, or other sanctions in this state, this state's ability to protect client interests is still less than it would be were the lawyer generally admitted to the bar of this state. But, when the client(s) are residents of other states (or are organizations with their primary places of business in other states), the state's interest in protecting its own residents as clients is not implicated. Such clients may be permitted to rely on the lawyer regulatory regimes of their own states and, if different, the state(s) where the lawyer is admitted. Attention may be focused on whether admission endangers non-client interests in this state.

[12] Even if an out-of-state lawyer does not have connections with this state rendering the lawyer ineligible for pro hac vice admission, neither such admission nor practice in contemplation of such admission should be used repetitively as a way to engage in regular practice in this state. In assessing whether repetitive appearances would have this effect, such appearances must be viewed qualitatively. Appearances solely on behalf of clients who neither reside nor have principal places of business in this state have less tendency to constitute regular practice than a similar number of appearances on behalf of clients who do reside or have principal places of business in this state. Multiple appearances on behalf of the same client or group of clients have less tendency to constitute regular practice than a similar number of appearances on behalf of different clients or groups of clients. Multiple appearances in proceedings that are related to one another have less tendency to constitute regular practice than a similar number of appearances in unrelated proceedings. Five unrelated

appearances by the same lawyer in two years, even including some for clients who reside or have principal places of business in this state, ordinarily do not constitute regular practice. But the court may inquire into pro hac vice appearances by other lawyers in the same firm and consider whether the firm as a whole is engaged in regular practice through pro hac vice appearances. In making such determinations, the court should consider the number of appearances in relation to the size of the firm. If the firm includes lawyers admitted generally in this state and actively practicing here, the number of pro hac vice appearances by out-of-state lawyers in that firm should be considered in relation to the size of the firm's practice in this state by generally admitted lawyers.

[13] If a lawyer or the lawyer's firm target marketing efforts at nonlawyers who are residents of this state or have principal places of business in this state and such marketing efforts are more than an insubstantial portion of all marketing efforts by the lawyer or firm, proposed representations apparently resulting from such marketing efforts may more readily be considered as part of a regular practice in this state than if the lawyer or firm did not engage in such marketing efforts. If the lawyer is part of a firm with an office in this state or includes lawyers admitted in this state, efforts to market the services of the local office or the services of locally-admitted lawyers ought not to be considered in determining whether a particular out-of-state lawyer in that firm is engaged in regular practice in this state.

[14] Clients sometimes retain in-state lawyers to conduct litigation in this state but desire to have out-of-state lawyers advise and assist with the conduct of that litigation. The in-state lawyer's exclusive role in proceedings before the court and under its authority allows that lawyer to substantially protect both the client(s) and any non-client interests. In such circumstances, the out-of-state lawyer's involvement in the litigation does not require admission pro hac vice.

[15] An out-of-state lawyer cannot be admitted pro hac vice until a case has already been filed by a locally-admitted lawyer as counsel of record. But, once suit is filed, admission pro hac vice is presumptively available in most circumstances. A lawyer who reasonably expects admission pro hac vice may conduct activities in contemplation of such a suit. If those activities include advising a client in this state, they must be performed in conjunction with locally admitted counsel.

[16] Residents of this state are allowed to travel to other states and to use the instrumentalities of interstate commerce and communication to obtain services and advice from persons authorized to provide such services by the states where those persons provide the services and advice. Provision of such services and advice by an out-of-state lawyer, physically located in a state where that lawyer is authorized to provide such services and advice, does not violate the unauthorized practice laws of this state.

[17] Private arbitration is a process governed by the agreement of the parties, is typically intended to be less formal than litigation, and often is intended to be governed by standards that are not exclusively legal, if they are legal at all. Requiring that representation be limited to in-state lawyers is contrary to the expectations of many parties to arbitration agreements. Moreover, the venue for arbitration may be chosen without regard to any connection to the subject matter of the dispute and, sometimes, for its very lack of any such connection. In these circumstances, clients have a special interest in being able to use the counsel of their choice, without any need for special authorization if that counsel is not admitted in the jurisdiction where the arbitration will occur. In recognition of party expectations and the more limited need for protection in the arbitration context, this rule authorizes out-of-state lawyers to engage in such representations.

[18] Lawyers engaged in proceedings in other states are primarily subject to the tribunals in which those proceedings are conducted. Even when discovery or investigative proceedings in connection with such out-of-state proceedings are conducted in this state, the interests protected by the unauthorized practice laws are not sufficiently implicated to warrant subjecting the parties to either the expense of the pro hac vice procedure.