

**Report 201F**

**AMERICAN BAR ASSOCIATION  
COMMISSION ON MULTIJURISDICTIONAL PRACTICE  
REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, the American Bar Association adopts the proposed *Model Rule on Pro Hac Vice*  
2 *Admission*, dated August 2002:

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4 **Model Rule on Pro Hac Vice Admission**

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

7 A. Definitions

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

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

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

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

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

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

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

26 5. “This state” refers to [state or other jurisdiction promulgating this rule].  
27 This Rule does not govern proceedings before a federal court or federal agency located in  
28 this state unless that body adopts or incorporates this Rule.

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

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

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

37       C.       In-State Lawyer's Duties. When an out-of-state lawyer appears for a client in a  
38 proceeding pending in this state, either in the role of co-counsel of record with the in-  
39 state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel  
40 or counsel of record for that client in the proceeding remains responsible to the client and  
41 responsible for the conduct of the proceeding before the court or agency. It is the duty of  
42 the in-state lawyer to advise the client of the in-state lawyer's independent judgment on  
43 contemplated actions in the proceeding if that judgment differs from that of the out-of-  
44 state lawyer.

45       D.       Application Procedure

46           1.       Verified Application. An eligible out-of-state lawyer seeking to appear in  
47 a proceeding pending in this state as counsel pro hac vice shall file a verified application  
48 with the court where the litigation is filed. The application shall be served on all parties  
49 who have appeared in the case and the [lawyer regulatory authority]. The application  
50 shall include proof of service. The court has the discretion to grant or deny the  
51 application summarily if there is no opposition.

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

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

64                   a.       may be detrimental to the prompt, fair and efficient administration  
65 of justice,

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

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

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

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

75       E.       Application

76           1.       Required Information. An application shall state the information listed on  
77 Appendix A to this rule. The applicant may also include any other matters supporting  
78 admission pro hac vice.

- 79                   2.       Application Fee. An applicant for permission to appear as counsel pro hac  
80                   vice under this Rule shall pay a non-refundable fee as set by the [lawyer  
81                   regulatory authority] at the time of filing the application.
- 82                   3.       Exemption for Pro Bono Representation. An applicant shall not be  
83                   required to pay the fee established by I.E.2 above if the applicant will not  
84                   charge an attorney fee to the client(s) and is:  
85                   a.       employed or associated with a pro bono project or nonprofit legal  
86                   services organization in a civil case involving the client(s) of such  
87                   programs: or  
88                   b.       involved in a criminal case or a habeas proceeding for an indigent  
89                   defendant.
- 90       F.       Authority of the [Lawyer Regulatory Authority] and Court: Application of Ethical  
91       Rules, Discipline, Contempt, and Sanctions
- 92               1.       Authority Over Out-of-State Lawyer and Applicant.
- 93                   a.       During pendency of an application for admission pro hac vice and  
94                   upon the granting of such application, an out-of-state lawyer submits to the  
95                   authority of the courts and the [lawyer regulatory authority] of this state for all  
96                   conduct relating in any way to the proceeding in which the out-of-state lawyer  
97                   seeks to appear. The applicant or out-of-state lawyer who has obtained pro hac  
98                   vice admission in a proceeding submits to this authority for all that lawyer's  
99                   conduct (i) within the state while the proceeding is pending or (ii) arising out of or  
100                  relating to the application or the proceeding. An applicant or out-of-state lawyer  
101                  who has pro hac vice authority for a proceeding may be disciplined in the same  
102                  manner as an in-state lawyer.
- 103                  b.       The court's and [lawyer regulatory authority's] authority includes,  
104                  without limitation, the court's and [lawyer regulatory authority's] rules of  
105                  professional conduct, rules of discipline, contempt and sanctions orders, local  
106                  court rules, and court policies and procedures.
- 107               2.       Familiarity With Rules. An applicant shall become familiar with the rules  
108               of professional conduct, rules of discipline of the [lawyer regulatory authority], local  
109               court rules, and policies and procedures of the court before which the applicant seeks to  
110               practice.
- 111    II.       Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All  
112    ADR
- 113            A.       In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding. In  
114            connection with proceedings pending outside this state, an out-of-state lawyer admitted to  
115            appear in that proceeding may render in this state legal services regarding or in aid of  
116            such proceeding.
- 117            B.       Consultation by Out-of-State Lawyer
- 118                  1.       Consultation with In-State Lawyer. An out-of-state lawyer may consult in  
119                  this state with an in-state lawyer concerning the in-state's lawyer's client's pending or  
120                  potential proceeding in this state.
- 121                  2.       Consultation with Potential Client. At the request of a person in this state  
122                  contemplating a proceeding or involved in a pending proceeding, irrespective of where  
123                  the proceeding is located, an out-of-state lawyer may consult in this state with that person

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

126 C. Preparation for In-State Proceeding. On behalf of a client in this state or  
127 elsewhere, the out-of-state lawyer may render legal services in this state in preparation  
128 for a potential proceeding to be filed in this state, provided that the out-of-state lawyer  
129 reasonably believes he is eligible for admission pro hac vice in this state.

130 D. Preparation for Out-of-State Proceeding. In connection with a potential  
131 proceeding to be filed outside this state, an out-of-state lawyer may render legal services  
132 in this state for a client or potential client located in this state, provided that the out-of-  
133 state lawyer is admitted or reasonably believes the lawyer is eligible for admission  
134 generally or pro hac vice in the jurisdiction where the proceeding is anticipated to be  
135 filed.

136 E. Services Rendered Outside This State for In-State Client. An out-of-state lawyer  
137 may render legal services while the lawyer is physically outside this state when requested  
138 by a client located within this state in connection with a potential or pending proceeding  
139 filed in or outside this state.

140 F. Alternative Dispute Resolution (“ADR”) Procedures. An out-of-state lawyer may  
141 render legal services to prepare for and participate in an ADR procedure regardless of  
142 where the ADR procedure is expected to take or actually takes place.

143 G. No Solicitation. An out-of-state lawyer rendering services in this state in  
144 compliance with this Rule or here for other reasons is not authorized by anything in this  
145 rule to hold out to the public or otherwise represent that the lawyer is admitted to practice  
146 in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit,  
147 advertise, or otherwise hold themselves out in publications as available to assist in  
148 litigation in this state.

149 H. Temporary Practice. An out-of-state lawyer will only be eligible for admission  
150 pro hac vice or to practice in another lawful way only on a temporary basis.

151 I. Authorized Services. The foregoing services may be undertaken by the out-of-state  
152 lawyer in connection with a potential proceeding in which the lawyer reasonably expects  
153 to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice  
154 admission is denied.

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156 **APPENDIX A**  
157

158 The out-of-state lawyer application shall include:

- 159 1. the applicant’s residence and business address;
- 160 2. the name, address and phone number of each client sought to be represented;
- 161 3. the courts before which applicant has been admitted to practice and the respective  
162 period(s) of admission;
- 163 4. whether the applicant (a) has been denied admission pro hac vice in this state, (b)  
164 had admission pro hac vice revoked in this state, or (c) has otherwise formally  
165 been disciplined or sanctioned by any court in this state. If so, specify the nature  
166 of the allegations; the name of the authority bringing such proceedings; the  
167 caption of the proceedings, the date filed, and what findings were made and what  
168 action was taken in connection with those proceedings;

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5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary 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 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, 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);
  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 shall appear of record together with the out-of-state lawyer.
  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.

## REPORT

Courts in all United States jurisdictions regularly admit lawyers from other United States 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. Many administrative agencies also provide for limited admission of out-of-state lawyers. Typically, the *pro hac vice* process does not allow out-of-state lawyers to practice regularly in the jurisdiction and requires that the applicant attest to knowledge of and compliance with local rules of conduct and practice. In most jurisdictions, there is little procedural structure for addressing *pro hac vice* applications, which are entrusted solely to the discretion of the court asked to admit the lawyer.

The ABA Section of Litigation has reported to the Commission that "generally the *pro hac vice* procedure is an adequate method for oversight of attorneys who appear and render legal services in pending litigation outside the states where licensed," but that "[a] more uniform *pro hac vice* procedure . . . would be strongly preferable to the disparate requirements now in place."<sup>1</sup> The ABA Section of Tort and Insurance Practice and the International Association of Defense Counsel (IADC) have expressed a similar view, and have worked with the ABA Section of Litigation to develop a proposed *Model Rule on Pro Hac Vice Admission*. The Commission on Multijurisdictional Practice proposes that the ABA adopt the *Model Rule* and recommend it to state supreme courts for their adoption. 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. Lawyers who appear on behalf of clients in courts of different states, and their clients, would benefit both from the elimination of unduly restrictive provisions that exist in a few states and from increased consistency of practice from state to state.

The proposed rule recognizes that parties should generally be permitted to obtain the assistance of the lawyers of their choice. An application for *pro hac vice* admission ordinarily should be granted. However, a court could deny an application if there were a basis for finding that the lawyer's admission may be detrimental to the prompt, fair and efficient administration of justice or to the legitimate interests of parties other than the client the lawyer proposes to represent, or that one or more of the clients the lawyer proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk, or that the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

In many circumstances, retaining a lawyer who is admitted in another jurisdiction promotes the client's interest and does not pose an unreasonable regulatory risk. For example, 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. The same may be said of clients who have the advice of another lawyer in retaining the applicant for *pro hac vice* admission. Further, clients have a special interest in being able to use lawyers with whom they have previously formed client-lawyer relationships. Such clients have had the ability to

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<sup>1</sup>See ABA Section of Litigation, Preliminary Position Statement on Multi-jurisdictional Practice (June 2001) at 5 and 3, [http://www.abanet.org/cpr/mjp-comm\\_sl.html](http://www.abanet.org/cpr/mjp-comm_sl.html).

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 be deprived of the ability to use such lawyers in proceedings in other jurisdictions. Likewise, parties should generally be able to use a lawyer with special experience or expertise.

In general, admission *pro hac vice* would be available only to lawyers who regularly practice law and reside outside the jurisdiction, since 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 and ordinarily should not be permitted to rely on *pro hac vice* admission as an alternative to general admission. The rule would permit a court to deny an application if the applicant has engaged in such frequent appearances as to constitute regular practice in the jurisdiction, since *pro hac vice* admission should not be used repetitively as a way to engage in regular practice in a jurisdiction. In addition to inquiring into the number of appearances by the particular applicant, a court could 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. The court could also consider whether the lawyer or the lawyer's firm has targeted marketing efforts at nonlawyers who reside in or have offices in the jurisdiction. As exceptions to the general restriction on *pro hac vice* admission of lawyers who establish offices in and reside in the jurisdiction, the rule would allow admission of lawyers who have recently established a connection to the state and who are 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, and lawyers residing in the jurisdiction who rarely appear in court there but are regularly practicing elsewhere.

Under the proposed rule, an eligible out-of-state lawyer desiring to appear as counsel *pro hac vice* would be required to file with the court a verified application, with proof of service on all parties who have appeared in the cause and on the relevant lawyer regulatory authority. Much of the information in the application is intended to assist the court in determining whether the lawyer has observed the requirements of professional responsibility in the jurisdictions in which the lawyer practices.

Additionally, under the proposed rule, the party must be represented by an in-state lawyer who serves as counsel of record and actively participates in the representation. Throughout the litigation, local counsel must remain responsible to the client and for the conduct of the proceeding. This includes advising the client of the lawyer's professional judgment when it differs from that of the out-of-state lawyer on contemplated actions. Ordinarily, the interests in protecting the client, the public and the court will be served where the court ascertains that the lawyer is admitted to practice elsewhere and has complied with professional obligations, given the ability of the locally-admitted co-counsel to protect against deficiencies in the out-of-state lawyer's representation, the ability of the court to detect any obvious incompetence in the conduct of the case, and the ability of the court and the jurisdiction's disciplinary authority to sanction the lawyer for misconduct in the proceeding.

The proposed rule would provide the jurisdiction's lawyer regulatory authority an opportunity to assist the court by objecting to the application or seeking revocation of admission once granted. Since 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 could be imposed to defray these costs. Under the rule, the court or administrative agency to which the application for *pro hac vice* admission was directed would not need to delay action on the application to await any response by the authority, but could freely reconsider any action in light of any information provided by or any objection expressed by the regulatory authority. The rule would assure 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 would be held.

Although the proposed rule would require a lawyer to seek and obtain *pro hac vice* admission in order to appear as counsel before a tribunal in a jurisdiction in which the lawyer was not admitted to practice, certain work relating to litigation and other dispute resolution proceedings could be conducted by an out-of-state lawyer without the necessity of obtaining *pro hac vice* admission, subject to proposed Rule 5.5(c) of the ABA *Model Rules of Professional Conduct*. For example, *pro hac vice* admission would not be required for lawyers who did not appear in court but who confined their role to giving advice to the in-state lawyer responsible for the matter or to assisting in the preparation of the case for trial. A lawyer who reasonably expected to be admitted *pro hac vice* could conduct activities in contemplation of filing a lawsuit. Lawyers appearing in a litigation in a jurisdiction in which they are authorized to represent a party could participate in meetings, discovery or investigative proceedings related to that litigation in a jurisdiction in which they were not licensed. Participation in private arbitration or other private dispute resolution proceedings also would be covered by Rule 5.5(c) but not by the *pro hac vice* rule.

