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 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, and not disbarred or suspended from practice in any jurisdiction.
2. 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 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 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.
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 [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.
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.

B. Authority of Court or 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.

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.

C. In-State Lawyer’s Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and 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 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 lawyer.

D. Application Procedure

1. Verified Application. An eligible out-of-state lawyer 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 proceeding litigation is filed. The application shall be served on all parties who have appeared in the case and the [Disciplinary Counsel lawyer regulatory authority]. 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 [Disciplinary Counsel lawyer regulatory authority] or a party to the proceeding may file an objection to the application or seek the court’s imposition of conditions to its being granted. The [Disciplinary Counsel 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 [Disciplinary Counsel lawyer regulatory authority] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [Disciplinary Counsel lawyer regulatory authority] or objecting party 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 proceeding may be revoked for any of the reasons listed in Section I.D.3
above.

E. Verified Application and Fees:
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 [court or
other proper authority lawyer regulatory authority] at the time of filing the
application. The [court or other proper authority] shall determine for what purpose
or purposes these fees shall be used.
3. Exemption for Pro Bono Representation. An applicant shall not be
required to pay the fee established by I.E.2 above if the applicant will not charge an
attorney fee to the client(s) and is:
   a. employed or associated with a pro bono project or nonprofit
legal services organization in a civil case involving the client(s) of such
programs: or
   b. involved in a criminal case or a habeas proceeding for an
indigent defendant.
4. Lawyers’ Fund for Client Protection. Upon the granting of a request
to appear as counsel pro hac vice under this Rule, the lawyer shall pay any required
assessments to the lawyers’ fund for client protection. This assessment is in
addition to the application fee referred to in Section (E)(2) above.

F. Authority of the [Disciplinary Counsel Lawyer Regulatory Authority, the
and Court: Application of Ethical Rules of Professional Conduct, Rules of
Disciplinary Enforcement Discipline, Contempt, and Sanctions
1. Authority Over Out-of-State Lawyer and Applicant.
   a. During pendency of an application for admission pro hac vice
and upon the granting of such application, an out-of-state lawyer submits to
the authority of the courts and the jurisdiction of [Disciplinary Counsel
lawyer regulatory authority] of this state for all conduct arising out of or
relating in any way to the application or proceeding in which the out-of-state
lawyer seeks to appear, regardless of where the conduct occurs. The
applicant or out-of-state lawyer who has obtained pro hac vice admission in a
proceeding submits to this authority for all that lawyer’s conduct (i) within
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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 lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

b. The court’s and the [Disciplinary Counsel’s lawyer regulatory authority’s] authority includes, without limitation, the court’s and the [Disciplinary Counsel’s lawyer regulatory authority’s] rules of professional conduct, rules of disciplinary enforcement, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with all applicable the rules of professional conduct, rules of disciplinary enforcement 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 lawyer 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 Lawyer

1. Consultation with In-State Lawyer. An out-of-state lawyer 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 lawyer 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 lawyer 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 lawyer 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 lawyer may render legal services in this state for a client or potential client located in this state, provided that the out-of-state lawyer is admitted or reasonably believes the lawyer 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 lawyer may render legal services while the lawyer 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.
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F. Alternative Dispute Resolution ("ADR") Procedures. An out-of-state lawyer may render legal services in this state 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 lawyer 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 out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in this state.

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

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

III. Admission of Foreign Lawyer in Pending Litigation Before a Court or Agency

A. A foreign lawyer is a person admitted in a non-United States jurisdiction and who is a member of a recognized legal profession in that jurisdiction, 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, and who is not disbarred, suspended or the equivalent thereof from practice in any jurisdiction.

B. The definitions of “client” and “state” in paragraphs I(A)(3) and (5) are incorporated by reference in this Paragraph III.

C. A court or agency of this state may, in its discretion, admit a foreign lawyer in a particular proceeding pending before such court or agency to appear pro hac vice as co-counsel or in an advisory or consultative role in that proceeding with an in-state lawyer, provided that the in-state lawyer is responsible to the client, responsible for the conduct of the proceeding, responsible for independently advising the client on the substantive law of a United States jurisdiction and procedural issues in the proceeding, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer.

D. The court or agency, in its discretion, may limit the activities of the foreign lawyer or require further action by the in-state lawyer, including but not limited to, requiring the in-state lawyer to sign all pleadings and other documents submitted to the court or to other parties, to be present at all depositions and conferences among counsel, and to attend all proceedings before the court or agency.
E. The provisions of Section I, paragraphs (D), (E), and (F) and Section II, paragraphs (G) and (H), applicable to out-of-state lawyers, also apply to foreign lawyers for purposes of the requirements of Paragraph III of this Rule.

F. In addition to the factors listed in paragraph I(D)(3) above, a court or agency in ruling on an application to admit a foreign lawyer pro hac vice, or in an advisory or consultative role, may weigh the following factors:

1. the legal training and experience of the foreign lawyer including in matters similar to the matter before the court or agency;

2. the extent to which the matter will include the application of:

   a. the law of the jurisdiction in which the foreign lawyer is admitted or
   b. international law or other law with which the foreign lawyer has a demonstrated expertise;

3. the foreign lawyer’s familiarity with the law of a United States jurisdiction applicable to the matter before the court or agency;

4. the extent to which the foreign lawyer’s relationship and familiarity with the client or with the facts and circumstances of the matter will facilitate the fair and efficient resolution of the matter;

5. the foreign lawyer’s English language ability; and

6. the extent to which it is possible to define the scope of the foreign lawyer’s authority in the matter as described in paragraph III (E) so as to facilitate its fair and efficient resolution, including by a limitation on the foreign lawyer’s authority to advise the client on the law of a United States jurisdiction except in consultation with the in-state lawyer.
APPENDIX A

The out-of-state or foreign 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 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 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;

- a statement as to whether the applicant (a) within the last [five (5)] years 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 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.

- 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 finding or order 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.

- 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
written finding or order is not in English, the applicant shall submit an
English translation and satisfactory proof of the accuracy of the translation;
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;
an averment as to the applicant’s familiarity with the rules of professional
conduct, rules of disciplinary enforcement of the [lawyer regulatory
authority], local or agency rules, and court policies and procedures of the
court or agency before which the applicant seeks to practice;
the name, address, telephone number(s), e-mail address(es), and bar number
of an active member in good standing of the bar of this state who will
sponsor supports the applicant’s pro hac vice request, who shall appear of record together with the out-of-state lawyer, and who shall
remain ultimately responsible to the client as set forth in Paragraph C of this
Rule; and
for applicants admitted in a foreign jurisdiction, an averment by the in-state
counsel referred to in Paragraph 9 above and by the lawyer admitted in a
foreign jurisdiction that, if the application for pro hac vice admission is
granted, service of any documents by a party or Disciplinary Counsel upon
that foreign lawyer shall be accomplished by service upon the in-state lawyer
or that in-state lawyer’s agent.
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.
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

Introduction

There are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. These clients may want help from a lawyer who knows the client’s operations, or their domestic, estate or property issues abroad. A foreign lawyer may also have knowledge about a country’s laws, language, and customs that may help U.S. courts, lawyers, and juries better understand a litigant’s position.

The ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that this omission should be addressed to give judges such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.¹

This proposal has ample precedent. A form of pro hac vice admission for non-U.S. lawyers is already permitted in at least fifteen states,² and is allowed in the U.S. Supreme Court.³ Numerous federal courts also have rules or other authority that permit foreign lawyers to be specially admitted to appear before them in a particular matter.⁴ Notably, the Commission has not learned of any resulting difficulties.

The Conference of Chief Justices has endorsed in principle the Commission’s proposal. On July 28, 2010, after reviewing an early draft of the Commission’s proposal, the Conference adopted a Resolution urging the ABA House of Delegates to add foreign lawyers in the “carefully limited” manner suggested by the Commission to the Model Rule on Pro Hac Vice Admission.⁵

As the Conference suggested, the Commission is proposing numerous restrictions on the pro hac vice authorization for foreign lawyers. The Commission’s proposal lists factors – well beyond

those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Disciplinary counsel and an opposing litigant may object to the application.6

The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission believes that these conditions and limitations, as well as others described below, provide abundant protection to the courts, litigants, and the public.

Before approving this Resolution for submission to the House of Delegates, the Commission’s Working Group on Inbound Foreign Lawyers conducted research and carefully vetted arguments raised in favor of and in 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 sum, by adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions, just as additional jurisdictions are considering this and related issues.7 Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

Background

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6 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.

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As a result of globalization, foreign and international law issues are arising with greater frequency in U.S. courts, both for companies and individuals. Globalization has also increased the number of foreign companies with U.S. offices or operations as well as the number of U.S. companies with foreign offices or operations. These companies are regularly involved in litigation in the U.S., and these cases sometimes involve foreign or international law.

Demographic shifts have led to an increase in the number of individuals in the U.S. who have cases implicating foreign or international law. As of 2009, the total foreign-born population in the U.S. was 36,750,000, approximately 12% of the U.S. population. These foreign-born residents have family law, estate planning, and business relationships in their countries of origin or the countries of origin of their spouses or business associates. When these legal matters are litigated in U.S. courts, they sometimes implicate foreign or international law. 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.

In sum, it is clear that globalization has affected litigation as much as it has affected the rest of society. The result has been an increase in litigation in U.S. courts concerning parties, property or businesses located in other countries, ranging from complex, international mass torts to those involving individual parties with international child custody or estate law issues. These cases sometimes implicate foreign or international legal issues about which foreign lawyers may have valuable insights.

**Inclusion of Foreign Lawyers Within the Pro Hac Vice Rule is Consistent With Current Policy**

The Commission’s proposal is consistent with what is already permitted by law in a number of state and federal courts. Currently, at least fifteen states permit pro hac vice admission by foreign lawyers. The U.S. Virgin Islands also permits foreign lawyers to appear pro hac vice in its courts. The Commission inquired and did not learn of any problems arising out of these

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11 See *supra* note 2.
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procedures. Additionally, the Texas Supreme Court Task Force on International Law Practice is considering whether to recommend to the Court a rule that permits pro hac vice practice authority for foreign lawyers.  

The Supreme Court of the United States provides in its Rules that “an attorney qualified to practice in the courts of a foreign state may be permitted to argue pro hac vice.” Some federal courts of special jurisdiction, such as the U.S. Court of Federal Claims and the Court of Military Commission Review, have rules that permit foreign lawyers to be specially admitted to appear before them in a particular matter.

Other federal courts, whether by rule or practice, have permitted foreign lawyers to be admitted pro hac vice. For example, in In re Livent, Inc., Nos. 98 Civ. 5686 (VM)(DFE) & 98 Civ. 7161 (VM)(DFE), 2004 WL 385048 (S.D.N.Y. March 2, 2004), the U.S. District Court for the Southern District of New York admitted pro hac vice two Canadian lawyers who were not admitted to any U.S. jurisdictions at the time of application. In granting admission pro hac vice, the Court stated: “Our Court’s pro hac vice rule, Local Civil Rule 1.3(c), omits any mention of an attorney of a foreign country. But admission pro hac vice is a sensible exercise of discretion on the particular facts of this litigation.” Obviously, there are occasions in which judges exercise their discretion to deny applications for pro hac vice admission by a foreign lawyer.

12 Supra note 7.
13 Supra note 3.
14 “Any person qualified to practice in the highest court of any foreign state may be specially admitted to practice before this court but only for purposes limited to a particular case; such person may not serve as the attorney of record. . . . A member of the bar of this court must file with the clerk a written motion to admit the applicant . . . .” Ct. of MILITARY COMM’N REVIEW RULES OF PRACTICE R. 8(f), supra note 4.
15 “An attorney qualified to practice in the courts of a foreign state may be permitted to argue pro hac vice. Counsel of record on whose behalf leave is requested to argue pro hac vice must file a motion seeking permission of the CMCR. The motion must identify the courts to which the pro hac vice counsel is admitted to practice and must indicate whether any disciplinary proceedings are pending against that counsel.” Ct. of MILITARY COMM’N REVIEW RULES OF PRACTICE R. 8(f), supra note 4.
16 See, e.g., U.S. D. W.D.N.Y., L.R. Civ. P., R. 83.1(c) (amended effective Jan.1, 2011). As amended the Rule deletes the prior specific reference to foreign lawyers, but the Clerk’s office confirmed to the Commission that this change is not meant to preclude admission of foreign lawyers as the court’s longstanding policy has permitted; the new language remains sufficiently broad to encompass foreign lawyers. Former Rule 83(i) of the Local Rules of Civil Procedure for the U.S. District Court for the Western District of New York provided that, “[a]n attorney duly admitted to practice in any . . . foreign country may in the discretion of the Court be admitted pro hac vice to participate before the Court in any matter in which he or she may for the time be employed.”
17 See also DataTreasury Corp. v. Wells Fargo & Co., Slip Copy, 2010 WL 3912498 (E.D.Tex., 2010) (Canadian lawyer admitted pro hac vice in patent infringement case); Rudich v. Metro Goldwyn Studio, Inc., No. 08-cv-389-bbc, Opinion and Order (Aug. 28, 2008) (admission pro hac vice of Israeli lawyer in copyright case. Although there are later proceedings in the case, the pro hac vice representation was maintained); and U.S. v. Black, No. 05 CR 00727 (N.D. Ill. Dec. 1, 2005) (Canadian lawyer admitted pro hac vice in criminal case).
19 See, e.g., DeGuzman v. Nicholson, 20 Vet.App. 526 (2006) where the U.S. Court of Appeals for Veterans Claims would not permit a lawyer from the Philippines to be admitted pro hac vice. In denying the application for pro hac
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Explanation of Proposed Amendments to the ABA Model Rule on Pro Hac Vice Admission

a. Amendments Specific to Foreign Lawyers

The Commission determined that, to ensure that foreign lawyers are subject to more careful scrutiny than U.S. lawyers for purposes of pro hac vice authority, a new Section III should be created to address foreign lawyers.

Section III, Paragraph A contains a proposed definition of a “foreign lawyer” that is substantively the same as the one used in the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants, the ABA Model Rule for Temporary Practice by Foreign Lawyers, and the recently adopted ABA Model Rule on Practice Pending Admission. In particular, 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. This longstanding ABA definition of a “foreign lawyer” has been adopted by the courts, and the Commission is not aware of any problems that have arisen from its use.

Proposed new Section III of the ABA Model Pro Hac Vice Rule contains the following important limitations and safeguards for clients, courts, and the public.

1. While the foreign lawyer would be of the client’s choosing, granting pro hac vice status to the foreign lawyer is entirely within the judge’s discretion, and the foreign lawyer bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Moreover, under the Model Rule, Disciplinary Counsel and an opposing litigant may object to the application.

2. The foreign lawyer may only appear as a co-counsel or in an advisory or consultative vice admission, the court held as a matter of statutory interpretation that “in order for an attorney to be allowed to represent an appellant in a particular case under Rule 46(c) without having been admitted to practice before the Court as a member of the Court's bar, the requirements for attorneys set forth in Rule 46(a) must be met.” While this court’s rules also allow for nonlawyer practitioners, in this case it held that this particular foreign lawyer did not meet the good cause shown criteria for nonlawyer pro hac vice admission. One judge concurred with the court’s denial of pro hac vice admission for this lawyer based on existing facts, but disagreed with the court’s incorporation of the requirements for full admission in Rule 46(a) into Rule 46(c)’s requirements for pro hac vice admission.
role, alongside an in-state lawyer in the proceeding. Importantly, authorization to practice pro hac vice does not constitute, and should not be read to provide, full admission to the practice of law in the jurisdiction in which the foreign lawyer seeks this privilege; it is a supervised limited practice authorization for a particular matter on a temporary basis.

3. When a foreign lawyer is authorized to appear pro hac vice, the in-state lawyer has added duties. The in-state lawyer is responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law of a United States jurisdiction as well as procedural issues, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. State courts have elaborated on the extent of local counsel’s gatekeeping responsibilities and the extent to which local counsel will be held accountable.

4. The court is empowered to define and impose limits on the scope of the foreign lawyer’s authority and may require specific participation by the in-state lawyer, such as requiring the in-state lawyer to sign all pleadings or be present at depositions.

5. Unlike situations where a U.S. licensed lawyer seeks to appear pro hac vice, the Commission’s proposal lists additional factors to guide the judge in determining whether to grant a foreign lawyer’s application for pro hac vice authority and its scope. These include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate its fair and efficient resolution, and the foreign lawyer’s English language facility.

6. The foreign lawyer must make full disclosure, under oath, to the court, opposing party and disciplinary counsel of his or her pro hac vice and disciplinary history. 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; is detrimental to legitimate interests of parties to the proceedings other than the client(s); poses a risk of inadequate representation to one or more of the clients the applicant proposes to represent; or if 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.

7. The foreign lawyer would be required to contribute to the jurisdiction’s lawyers’ fund for client protection.

8. 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.
9. The foreign lawyer is subject to the disciplinary jurisdiction of the court before which pro hac vice authority has been granted and the jurisdiction’s lawyer disciplinary authority. Because the foreign applicant would be required to provide contact information for all the agencies and courts before which the foreign lawyer has been admitted to practice, the court and disciplinary counsel can report any misconduct to the lawyer’s home licensing authority.  

b. Additional Proposed Amendments to the Model Rule and Appendix A

Other changes to the Model Rule and its 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 Enforcement” instead of “rules of discipline.” The terms “Disciplinary Counsel” and “Rules of Disciplinary Enforcement” are consistent with the ABA Model Rules for Lawyer Disciplinary Enforcement, which have been ABA policy for decades. Changes in Paragraph I.F. 1(a) are intended to increase clarity and eliminate redundancy.

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 Section I, paragraph E(4) of the Rule. This requirement ensures that the provisions of the Model Rule on Pro Hac Vice Admission are consistent with Rule 1 (B)(2) of the ABA Model Rules for Lawyers’ Funds for Client Protection.

In addition, the Commission has added language to Section I, paragraphs E(2) and (4) to clarify that the contribution to the client protection fund is considered a separate payment from the nonrefundable pro hac vice application fee. A number of jurisdictions use all or part of the pro hac vice application fee to fund legal services to the poor. This clarifying language, which was recommended by several commenters, will ensure that there is no negative effect on access to justice funding.

The Commission also 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

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20 As noted in the Commission’s Report accompanying its Resolution to amend Model Rule 5.5, the ABA Standing Committee on Professional Discipline and the ABA Task Force on International Trade in Legal Services are developing a model international reciprocal discipline notification protocol to facilitate the necessary information exchange between U.S. and non-U.S. lawyer regulators.

application can communicate with the applicant and others who may have relevant information. The same is true of the Commission’s recommendation 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 inquiries of authorities in the lawyer’s home country and notification of 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 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 the lawyer’s admission to practice and good standing in any foreign jurisdictions. This requirement mirrors a similar requirement in the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants.

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 authority, and concluded and pending disciplinary proceedings. A 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 ensure that courts are responsive to the needs of 21st century clients and counsel, while providing adequate safeguards 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.
GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Ethics 20/20
Submitted By: Jamie S. Gorelick and Michael Traynor, Co-Chairs

1. Summary of Resolution(s).

Inbound Foreign Lawyers: Pro Hac Vice Authority

The Commission seeks to amend the ABA Model Rule on Pro Hac Vice Admission to provide judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.

There are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. These clients may feel the need for help from a lawyer who knows the client’s operations, or their domestic, estate or property issues abroad. A foreign lawyer may also have knowledge about a country’s laws, language, and customs that may help U.S. courts, lawyers, and juries better understand a litigant’s position.

The ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that this omission should be addressed to give judges such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.

This proposal has ample precedent. A form of pro hac vice admission for non-U.S. lawyers is already permitted in at least fifteen states and is allowed in the U.S. Supreme Court. Numerous federal courts also have rules or other authority that permit foreign lawyers to be specially admitted to appear before them in a particular matter. Notably, the Commission has not learned of any resulting difficulties.

The Conference of Chief Justices has endorsed in principle the Commission’s proposal. On July 28, 2010, after reviewing an early draft of the Commission’s proposal, the Conference adopted a Resolution urging the ABA House of Delegates to add foreign lawyers in the “carefully limited” manner suggested by the Commission to the Model Rule on Pro Hac Vice Admission.

As the Conference suggested, the Commission is proposing numerous restrictions on the
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.

pro hac vice authorization for foreign lawyers. The Commission’s proposal lists factors – well beyond those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Disciplinary Counsel and an opposing litigant may object to the application.

The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission believes that these conditions and limitations, as well as others described below, provide abundant protection to the courts, litigants, and the public.

By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions, just as additional jurisdictions are considering this and related issues. Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

2. Approval by Submitting Entity.

The Commission approved the Resolutions relating to inbound foreign lawyers at its October 25 and 26, 2012 meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The adoption of this resolution would result in amendments to the ABA Model Rule on Pro Hac Vice Admission.
5. **What urgency exists which requires action at this meeting of the House?**

The ABA is the national leader in developing and interpreting standards of legal ethics and professional regulation, and therefore, has the responsibility to ensure that its Model Rules of Professional Conduct and related regulatory policies keep pace with social change and the evolution of law practice. By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions just as jurisdictions have adopted or are considering related changes. In sum, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

6. **Status of Legislation.** (If applicable)

   N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   The Center for Professional Responsibility will publish any updates to the ABA Model Rules of Professional Conduct and Comments, and also will publish electronically other newly adopted policies. The Policy Implementation Committee of the Center for Professional Responsibility has in place the procedures and infrastructure to successfully implement any policies proposed by the Ethics 20/20 Commission that are adopted by the House of Delegates. The Policy Implementation Committee and Ethics 20/20 Commission have been in communication in anticipation of the implementation effort. The Policy Implementation Committee has been responsible for the successful implementation of the recommendations of the ABA Ethics 2000 Commission, the Commission on Multijurisdictional Practice and the Commission to Evaluate the Model Code of Judicial Conduct.

8. **Cost to the Association.** (Both direct and indirect costs)

   None

9. **Disclosure of Interest.** (If applicable)

10. **Referrals.**

    From the outset, the Ethics 20/20 Commission agreed that transparency, broad outreach and frequent opportunities for input into its work would be crucial. Over the last three and one-half years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts and the public the following: its many issues papers; draft proposals; discussion drafts; and draft informational reports. The Commission held thirteen open
meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; created webinars and podcasts; made CLE presentations, received and reviewed hundreds of written and oral comments from the bar and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the House of Delegates, the ABA Board of Governors, the National Conference of Bar Presidents, and numerous ABA entities, and local, state, and international bar associations.

All materials were posted on the Commission’s website. The Commission created and maintained a listserv for interested persons to keep apprised of the Commission’s activities. There are currently over 800 people on that list.

The Commission’s process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities. Included on these Working Groups were representatives of the ABA Standing Committee on Ethics and Professional Responsibility, ABA Standing Committee on Professional Discipline, ABA Standing Committee on Client Protection, ABA Standing Committee on Delivery of Legal Services, ABA Section of International Law, ABA Litigation Section, ABA Section of Legal Education and Admissions to the Bar, ABA Section of Real Property, Trust and Estate Law, ABA Task Force on International Trade in Legal Services, ABA General Practice, Solo and Small Firm Division, ABA Young Lawyers Division, ABA Standing Committee on Specialization, ABA Law Practice Management Section, and the National Organization of Bar Counsel.

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Ellyn S. Rosen  
Regulation Counsel  
ABA Center for Professional Responsibility  
321 North Clark Street, 17th floor  
Chicago, IL 60654-7598  
Phone: 312/988-5311  
Fax: 312/988-5491  
Ellyn.Rosen@americanbar.org  
www.americanbar.org

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Jamie S. Gorelick, Co-Chair  
WilmerHale  
Michael Traynor, Co-Chair  
3131 Eton Ave.
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.

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EXECUTIVE SUMMARY

1. Summary of the Resolution

Inbound Foreign Lawyers: Pro Hac Vice Authority

The Commission seeks to amend the ABA Model Rule on Pro Hac Vice Admission to provide judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.

There are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. These clients may feel the need for help from a lawyer who knows the client’s operations, or their domestic, estate or property issues abroad. A foreign lawyer may also have knowledge about a country’s laws, language, and customs that may help U.S. courts, lawyers, and juries better understand a litigant’s position.

The ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that this omission should be addressed to give judges such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.

This proposal has ample precedent. A form of pro hac vice admission for non-U.S. lawyers is already permitted in at least fifteen states and is allowed in the U.S. Supreme Court. Numerous federal courts also have rules or other authority that permit foreign lawyers to be specially admitted to appear before them in a particular matter. Notably, the Commission has not learned of any resulting difficulties.

The Conference of Chief Justices has endorsed in principle the Commission’s proposal. On July 28, 2010, after reviewing an early draft of the Commission’s proposal, the Conference adopted a Resolution urging the ABA House of Delegates to add foreign lawyers in the “carefully limited” manner suggested by the Commission to the Model Rule on Pro Hac Vice Admission.

As the Conference suggested, the Commission is proposing numerous restrictions on the pro hac vice authorization for foreign lawyers. The Commission’s proposal lists factors – well beyond those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not
limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must support that application) that he or she satisfies the conditions for such authorization. Disciplinary Counsel and an opposing litigant may object to the application.

The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission believes that these conditions and limitations, as well as others described below, provide abundant protection to the courts, litigants, and the public.

By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions, just as additional jurisdictions are considering this and related issues. Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

2. Summary of the Issue that the Resolution Addresses

As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA has the responsibility to ensure that its Model Rules of Professional Conduct and regulatory policies keep pace with social change and the evolution of law practice. In furtherance of this, in August 2009, then-ABA President Carolyn B. Lamm created the Commission on Ethics 20/20 to study the ethical and regulatory implications of globalization and technology on the legal profession and propose necessary amendments to and/or new ABA policies.

Globalization continues to transform the legal marketplace, with more clients confronting legal problems that cross jurisdictional lines, more lawyers needing to respond to those client needs by crossing borders (including virtually) and relocating to new jurisdictions. The Commission on Ethics 20/20 reviewed the regulatory framework adopted by the House of Delegates in 2002 at the recommendation of the Commission on Multijurisdictional Practice. Unsurprisingly, in light of the accelerated pace of change and the growing proportion of legal work that involves more than one U.S. or foreign jurisdiction, the Commission found that ethical issues are arising with greater frequency. Courts, lawyers, clients and the public need enhanced guidance to address these issues.
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For example, there are increasing instances in which litigation in U.S. courts involves issues related to international or foreign law. There are also increasing instances in which foreign entities or individuals find themselves in U.S. courts. One consequence is that litigants occasionally seek to retain foreign lawyers who can assist U.S. counsel on relevant issues. The ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The ABA Commission on Ethics 20/20 concluded that, consistent with ample and existing precedent in state and federal courts, this omission should be addressed to give judges in all jurisdictions such guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice.

The Commission’s proposal is consistent with following guiding principles that then ABA President Lamm directed the Commission to follow: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed resolution of the Commission on Ethics 20/20, if adopted, will provide necessary guidance to the profession that will allow lawyers to meet the ethical and regulatory challenges posed by globalization, as well as take advantage of the opportunities for the ethical delivery of legal services. By adopting the Commission’s proposal, the ABA would retain its leadership role in setting the standards for pro hac vice admissions.

As noted above, the ABA Model Rule on Pro Hac Vice Admission currently provides judges no guidance about granting such limited and temporary practice authority to foreign lawyers. The Commission’s proposal, drawing on ample precedent, provides judges with that guidance when they exercise their discretion to authorize foreign lawyers to appear pro hac vice. Moreover, the Commission’s proposal would foster greater uniformity and ensure that jurisdictions adopt appropriate, and carefully limited, rules on the role of foreign lawyers in U.S. courts.

The Commission’s proposal lists factors – well beyond those applicable to a U.S. licensed lawyer seeking to appear pro hac vice – to guide a judge in determining whether to grant a foreign lawyer’s application and, if so, how to determine the scope of the practice authority. These factors include, but are not limited to, the legal training and experience of the foreign lawyer, the foreign lawyer’s familiarity with the law of the jurisdiction applicable to the matter, the extent to which the foreign lawyer’s relationship and familiarity with the client or the matter will facilitate the fair and efficient resolution of the litigation, and the foreign lawyer’s English language facility. The foreign lawyer also bears the burden of demonstrating to the judge and to local counsel (who must
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The foreign lawyer could only appear as a co-counsel or in an advisory or consultative role, alongside an in-state lawyer and only for purposes of that particular proceeding. Moreover, the in-state lawyer would be responsible to the court and the client for the conduct of the proceeding, for independently advising the client on the substantive law and procedural issues of a United States jurisdiction, and for advising the client whether the in-state lawyer’s judgment differs from that of the foreign lawyer. The Commission believes that these conditions and limitations provide abundant protection to the courts, litigants, and the public.

4. Summary of Minority Views

From the outset, the Commission on Ethics 20/20 committed to and implemented a process that was transparent, open, and provided broad outreach and frequent opportunities for input into its work. Over the last three and one-half years the Commission routinely released for comment to all ABA entities (including the Conference of Section and Division Delegates), state, local, specialty and international bar associations, courts, regulatory authorities, and the public the following: its many issues papers; draft proposals; discussion drafts; and draft informational reports. The Commission held thirteen open meetings where audience members participated; conducted numerous public hearings and roundtables, domestically and abroad; presented webinars and podcasts; made CLE presentations, received and reviewed more than 350 written and oral comments from the bar, the judiciary, and the public. To date, the Commission has made more than 100 presentations about its work, including presentations to the Conference of Chief Justices, the House of Delegates, the National Conference of Bar Presidents, and numerous ABA entities, and local, state, and international bar associations. All materials, including all comments received, have been posted and remain on the Commission’s website (click here for the Commission’s website). The Commission created and maintained a listserv for interested persons to keep apprised of the Commission’s activities.

Further, as noted in the General Information Form accompanying its proposals, the Commission’s process was collaborative. It created seven substantive Working Groups with participants from relevant ABA and outside entities.

Inherent in any undertaking of this scope and complexity is the recognition that there will be disagreements about the approach to issues as well as the substance of proposals. That said, with the exception of continued concerns by only some ABA members the Commission was not aware of any organized or formal minority views or opposition at the time the Resolution and Report were filed.
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The Commission is grateful for and took seriously all submissions, no matter the form. The Commission routinely extended deadlines to ensure that the feedback it received was as complete as possible and that no one was precluded from providing input if they wanted. The Commission reviewed and analyzed all comments it received, in addition to the written and oral testimony received at public hearings, and questions raised at its many appearances.

Throughout the last three and one-half years, the Commission received far more comments supportive of its draft proposals than the constructive comments raising questions or concerns about them. The Commission made every effort to resolve constructive concerns raised, and in many instances made changes based upon them. There can be no doubt that the Commission’s final proposals were positively shaped by those who participated in the feedback process.