American Bar Association
ADOPTED BY THE HOUSE OF DELEGATES
August 12-13, 2002

Report No. 201F

RESOLVED, That the American Bar Association adopts the proposed Model Rule on Pro Hac Vice Admission, dated August 2002.

Model Rule on Pro Hac Vice Admission
Admission In Pending Litigation Before A Court Or Agency

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

E. 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.

3. Exemption for Pro Bono Representation. An applicant shall not be required to pay the fee established by 1.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.
The out-of-state lawyer application shall include:

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 will be the lawyer of record for the client(s) the applicant seeks to represent. The bar member shall appear of record together with the out-of-state lawyer.
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." 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

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 where 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.