

# SUPREME COURT OF LOUISIANA

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## ORDER

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Acting in accordance with Article V, Sections 1 and 5 of the 1974 Louisiana Constitution, and the inherent power of this Court, and considering the recommendations of the Louisiana State Bar Association, and the need to adopt a rule concerning *pro hac vice* admission of attorneys to state courts and agencies in Louisiana,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Louisiana Supreme Court Rule XVII, Section 13 be and is hereby promulgated to read as follows:

### **Section 13. *Pro Hac Vice* Admission**

#### **A. Admission in Pending Litigation Before a Court or Agency**

##### **1. Definitions**

(i) An “out-of-state” attorney is a person not admitted to the bar of this state but who is a member in good standing of the bar of any United States District Court or of the highest court of any state, territory, or insular possession of the United States or of the District of Columbia.

(ii) An out-of-state attorney is “eligible” for admission *pro hac vice* if the attorney acts in association with an attorney duly licensed to practice law by the Supreme Court of this state as required under Louisiana Revised Statute 37:214 and the out-of-state attorney:

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

- b. neither resides nor is regularly employed at an office in this state; or
- c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission *pro hac vice* or in other lawful ways.

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

(iv) An “alternate 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.

(v) “This state” refers to the State of Louisiana. This rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts this rule.

**2. Authority of Court or Agency to Permit Appearance By Out-of-State Attorney and In-State Lawyer’s Duties Generally**

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

(ii) **Administrative Agency Proceeding.** If representation of a person in a matter before an agency of this state is limited to licensed attorneys, 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*.

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

### **3. Procedure**

(i) **Motion and Verified Application.** The attorney licensed in this state shall file a written *ex parte* motion with the court or agency where the proceeding is pending, requesting that the out-of-state attorney be admitted *pro hac vice*. Appended to the motion shall be an application verified by both the out-of-state counsel and in-state counsel. The motion and application shall be served on all parties who have appeared in the matter and the Louisiana Attorney Disciplinary Board. The motion and application shall include proof of service, and shall include proof of payment to the Disciplinary Board of the fee required by Subpart A4(ii). The court or agency has the discretion to grant or deny the motion and application summarily, and in advance of the twenty day period for objecting allowed by Subpart A3(ii).

(ii) **Objection to Motion.** Within twenty days of service, the Louisiana Attorney Disciplinary Board or any party to the proceeding may file an objection to the motion. The Louisiana Attorney Disciplinary Board or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The

Louisiana Attorney Disciplinary Board or objecting party may seek denial of the motion or modification of it, and may request a hearing on the matter. If the motion has already been granted, the Louisiana Attorney Disciplinary Board or any party may move that the *pro hac vice* admission be withdrawn.

(iii) **Standard for Admission and Revocation of Admission.**

The courts and agencies of this state have discretion as to whether to grant motions and applications for admission *pro hac vice*. A motion seeking *pro hac vice* admission ordinarily should be granted unless the court or agency finds reason to believe:

- a. the admission may be detrimental to the prompt, fair and efficient administration of justice;
- b. the admission may be detrimental to legitimate interests of the 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;
- d. the applicant has engaged in frequent appearances as to constitute regular practice in this state; or
- e. the applicant attorney is not competent or ethically fit to practice.

(iv) **Revocation of Admission.** Admission to appear as counsel *pro hac vice* in a suit may be revoked for any of the reasons listed in subpart A(3)(iii) above, or for any other reason the court or agency, in its discretion, deems appropriate.

#### **4. Application**

(i) **Required Information.** An application shall include the information listed in the form Application for *Pro Hac Vice* Admission, which is hereby approved for use in applying for *pro hac vice* admission. The form application is included as Part C of the Appendix to this rule. The applicant may also include any other matters supporting admission *pro hac vice*.

(ii) **Application Fee.** An applicant for permission to appear as counsel *pro hac vice* under this rule shall pay a non-refundable fee of \$250.00 to the Louisiana Attorney Disciplinary Board. This fee shall be separate and distinct from any fee which is assessed by the Court or agency in which the application is filed.

(iii) **Exemption for Pro Bono Representation.** An applicant shall not be required to pay the fee required by subpart A(4)(ii), 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.

#### **5. Authority of the Louisiana Attorney Disciplinary Board and Court: Application of Ethical Rules, Discipline, Contempt and Sanctions**

##### **(i) Authority Over Out-of-State Attorney and Applicant.**

- a. During pendency of an application for admission *pro hac vice* and upon the granting of such application, an out-of-state attorney submits to the authority of the courts and the Louisiana Attorney Disciplinary Board of this state for all

conduct relating in any way to the proceeding in which out-of-state attorney seeks to appear. The applicant or out-of-state attorney who has obtained *pro hac vice* admission in a proceeding submits to this authority for all that attorney's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or out-of-state attorney who has *pro hac vice* authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

- b. The authority of the Courts and the Louisiana Attorney Disciplinary Board referred to in the foregoing section includes, without limitation, the authority under Louisiana Supreme Court Rule XIX, the Rules of Professional Conduct, rules of discipline, contempt and sanctions orders, local court rules, and court policies and procedures.

(ii) **Familiarity With Rules.** An applicant shall become familiar with the Rules of Professional Conduct, rules of discipline of the Louisiana Attorney Disciplinary Board, local court rules, and policies and procedures of the court or agency before which the applicant seeks to practice.

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

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

**2. Consultation by Out-of-State Attorney**

(i) **Consultation with In-State Lawyer.** An out-of-state attorney may consult in this state with an in-state lawyer concerning the in-state lawyer's client's pending or potential proceeding in this state.

(ii) **Consultation with Potential Client.** At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state attorney may consult in this state with that person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

**3. Preparation for In-State Proceeding.** On behalf of a client in this state or elsewhere, the out-of-state attorney may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out-of-state attorney reasonably believes he/she is eligible for admission *pro hac vice* in this state.

**4. Preparation for Out-of-State Proceeding.** In connection with a potential proceeding to be filed outside this state, an out-of-state attorney may render legal services in this state for a client or potential client located in this state, provided that the out-of-state attorney is admitted or reasonably believes he/she is eligible for admission generally or *pro hac vice* in the jurisdiction where the proceeding is anticipated to be filed.

**5. Services Rendered Outside This State for In-State Client.** An out-of-state attorney may render legal services while the attorney is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed or to be filed in or outside this state.

**6. Alternative Dispute Resolution ("ADR") Procedures.** An out-of-state attorney may render legal services to prepare for and participate

in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

7.     **No Solicitation.** An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits. Nothing in this rule authorizes out-of-state attorneys to solicit, advertise, or otherwise hold themselves out in publications directed solely to this state as available to assist in litigation in this state.

8.     **Temporary Practice.** An out-of-state attorney will only be eligible for admission *pro hac vice* or to practice in another lawful way no more than temporarily in this state.

C.     **Not the Unauthorized Practice of Law.** The foregoing rendition of legal or other services shall not be deemed the unauthorized practice of law by the out-of-state attorney, even if ultimately no proceeding is filed or if *pro hac vice* admission is ultimately denied. An out-of-state attorney rendering services in this state in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits.

This rule shall become effective on August 1, 2004 and shall remain in full force and effect thereafter until amended or changed through future orders of this Court.

New Orleans, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

FOR THE COURT:



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Pascal F. Calogero, Jr., Chief Justice