

## **LOUISIANA LAW ALERT**

### **LOUISIANA SUPREME COURT ADOPTS IMPORTANT RULE REGARDING PARTICIPATION BY OUT-OF-STATE LAWYERS IN LOUISIANA LITIGATION**

**The Louisiana Supreme Court recently adopted a new Rule XII Section 13, governing the participation by out of state attorneys in Louisiana litigation. Often, guest attorneys desire to participate in Louisiana cases on a *pro hac vice* basis. The new rule governs such participation. It provides:**

SECTION 13. Pro Hac Vice Admission [Effective August 1, 2004]

#### 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.

[Effective August 1, 2004]

# ADMISSION FORM

**The Court has specified an admission form that must be completed for such participation. It is very extensive. For, convenience, it is as follows:**

Part C. Application for Pro Hac Vice Admission in Louisiana

APPLICATION FOR PRO HAC VICE ADMISSION IN LOUISIANA(1)

1. Full name of Applicant: \_\_\_\_\_

2. Full name, address and telephone number of law firm in which the applicant practices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Applicant's residence address and telephone number:

\_\_\_\_\_  
\_\_\_\_\_

4. Name of case in which admission is sought: \_\_\_\_\_

\_\_\_\_\_

5. Court or agency and docket number of case: \_\_\_\_\_

\_\_\_\_\_

6. Name, address and phone number of each client sought be to represented:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

7. Please list the courts before which you have been admitted to practice, the respective period(s) of admission and your bar roll or other identifying number before the courts

_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
\_\_\_\_\_

8. Please check the appropriate box indicating whether you:

(a) have been denied admission pro hac vice in this state

yes    no

(b) had admission pro hac vice revoked in this state

yes     no

(c) have otherwise formally been disciplined or sanctioned by any court in this state

yes     no

If you answered affirmatively to these questions, please specify:

The nature of the allegations: \_\_\_\_\_

The name of the authority bringing such proceedings: \_\_\_\_\_

The caption of the proceedings: \_\_\_\_\_

The date filed: \_\_\_\_\_

What findings were made: \_\_\_\_\_

What action was taken in connection with those proceedings: \_\_\_\_\_

\_\_\_\_\_

9. Have you ever been publicly disciplined by any lawyer disciplinary committee, state or federal court, or lawyer disciplinary agency in any other jurisdiction?

yes     no

If you answered affirmatively, as to each such discipline, please provide the following:

A summary of the allegations against you: \_\_\_\_\_

\_\_\_\_\_

The name of the state or federal authority bringing such proceedings: \_\_\_\_\_

The date the discipline was imposed: \_\_\_\_\_

The style of the proceedings: \_\_\_\_\_

The findings made and discipline imposed in connection with the proceedings: \_\_\_\_\_

\_\_\_\_\_

(A copy of any public Order of lawyer discipline imposed against the applicant shall be appended to this Application)

10. Please state whether you have been held formally in contempt or otherwise sanctioned by any court in a written order in the last five (5) years.

yes     no

If you answered affirmatively, as to each occurrence, please provide the following:

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: \_\_\_\_\_

The substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to this Application): \_\_\_\_\_

11. Please state whether you have been convicted of any crimes (other than minor, non-alcohol related traffic violations).

yes     no

If you answered affirmatively, as to each occasion, please provide the following:

The substance of the criminal charge(s) \_\_\_\_\_

\_\_\_\_\_

The name of the court before which the proceeding was conducted: \_\_\_\_\_

\_\_\_\_\_

The approximate date the proceeding was concluded: \_\_\_\_\_

\_\_\_\_\_

The outcome of the proceeding: \_\_\_\_\_

\_\_\_\_\_

(A copy of any such Judgment or Order of Conviction shall be appended to this Application.)

12. Are there any criminal charges (other than minor, non-alcohol related traffic violations) or lawyer disciplinary complaints or proceedings presently pending against you?

yes     no

If you answered affirmatively, as to each such pending criminal charge or lawyer disciplinary complaint or proceeding, please provide the following:

The name and address of the court or agency before which the criminal proceeding or lawyer disciplinary complaint or proceeding is pending: \_\_\_\_\_

\_\_\_\_\_

The substance and nature of any criminal charge or lawyer disciplinary complaint or proceeding pending against you:

\_\_\_\_\_

\_\_\_\_\_

(A copy of any pending lawyer discipline complaint(s) or proceeding(s), or criminal charge(s), shall be appended to this Application.)

13. Please state the name and address of each court or agency and a full identification of each proceeding in which the applicant has moved a Louisiana Court or agency, and/or filed an application to appear pro hac vice, or appeared pro hac vice, in this state within the preceding two years; the date of each application; and the outcome of the application.

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14. Please list the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor your pro hac vice request. The bar member preferably will be the attorney of record for the client(s) you seek to represent.

\_\_\_\_\_  
Name Bar number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

15. Please list your prior or continuing representation in other matters of one or more of the clients you propose to represent and any relationship between such other matter(s) and the proceeding for which you seek admission.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Please list any special experience, expertise, or other factor deemed to make it particularly desirable that you be permitted to represent the client(s) you propose to represent.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Please attach to this application a current certificate of good standing in the state(s) you are presently licensed to practice in.

VERIFICATION

Our signatures serve as verification that (1) the information contained in this application is true and correct, to the best of our information and belief; (2) the application fee required by Louisiana's pro hac vice admission rule been remitted to the Louisiana Attorney Disciplinary Board (unless an exemption is applicable); (3) the out-of-state attorney is "temporarily present in this state" pursuant to R.S. 37:214; (4) in the event this application is approved, all documents requiring the signature of counsel for a party may not be signed solely by the out-of-state attorney, but also must bear the signature of the Louisiana associated counsel; (5) this application has been or will be served upon all parties and upon the Louisiana Attorney Disciplinary Board; and (6) we are familiar with the Louisiana Rules of Professional Conduct, the rules of discipline of the Louisiana Attorney Disciplinary Board, and the local rules and court procedures of the court or agency before which the applicant is seeking to practice.

\_\_\_\_\_  
Full Name of Applicant

\_\_\_\_\_  
Business Address and Phone Number

\_\_\_\_\_  
Signature of Applicant

of Applicant

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Full Name of Louisiana  
Associated Attorney

\_\_\_\_\_  
Business Address, Phone Number,  
and Bar Roll Number of Associated Attorney

\_\_\_\_\_  
Signature of Louisiana  
Louisiana Associated Attorney

\_\_\_\_\_

1 If the spaces are not sufficient to allow for complete responses, please append any additional responses to this Application.

[Effective August 1, 2004]