

Taking the vice out of *pro hac vice*: temporary admission and local counsel

Foreign lawyers – ones from other states – come to Indiana from time-to-time to practice law in our courts on a temporary basis. For those who pretend to know Latin, this is sometimes called *pro hac vice* admission. Those lawyers and their Indiana local counsel will find that the Supreme Court has recently retooled the procedures they must follow beginning next year.

I'll discuss the changes in a bit, but first I pause to point out why a change was necessary and muse about the very idea of temporary admission. The amended rule – Admission & Discipline Rule 3, effective Jan. 1, 2007 – is at: <http://www.in.gov/judiciary/orders/rule-amendments/2006/adm-disc-081606.pdf>

Flying under the radar

Under the existing temporary admission regime, a foreign lawyer who obtains temporary admission from a judge has 30 days to register with the Clerk of the Supreme Court and pay a registration fee, currently \$90. Due to a recent amendment to Admission & Discipline Rule 2, the amount of the registration fee will increase to \$105 on Jan. 1, 2007.

Under the current scheme, there is no good way to assure that temporarily admitted, foreign lawyers make the required registration with the Supreme Court Clerk. As one might expect, out of ignorance or contrivance, some lawyers skip the part that requires them to pay a fee. The Disciplinary Commission has seen three, recent examples

of this, and I'm sure there are many more. In a recent *per curiam* opinion (there's that Latin again), the Supreme Court tried to call attention to the problem. *Matter of Anonymous*, 845 N.E.2d 145 (Ind. 2006).

Top down authority

The state constitution gives the Indiana Supreme Court original jurisdiction over admission to the bar. Ind. Const. Art. 7, §4. By statute, that jurisdiction is also exclusive. I.C. §33-24-1-2(b). Plus, the Supreme Court has said so. *See* Admis. Disc. R. 3(1). This means that the authority of a trial court to regulate the practice of law is greatly limited. *See*, for example, *Matter of McQueen*, 396 N.E.2d 903 (Ind. 1979), where the Supreme Court overturned a trial court judge's order suspending a lawyer from practicing in his courtroom for 90 days.

Admis. Disc. R. 3 represents the Supreme Court's limited delegation of authority to lower courts to allow bar admissions on a temporary basis. Put otherwise, unless done in compliance with Admis. Disc. R. 3, a lower court has no jurisdiction to allow a foreign lawyer to appear before it on a temporary basis.

Under both the current and the new versions of Admis. Disc. R. 3, the procedures for temporary admission require a written, verified petition to the applicable court that makes specific disclosures. It is thus inexplicable that trial judges occasionally allow temporary admission on the basis of oral motions or written petitions that do not include the disclosures required by the rule.

Would you rather take the bar exam?

Our courts have not viewed temporary admission of foreign lawyers as a ticket to the routine practice of law in Indiana. *See*, for example, *Hanson v. Spolnik*, 685 N.E.2d 71, n.1 (Ind. Ct. App. 1997), where the Court of Appeals stated:

Although Ind. Admission & Discipline Rule 3 does not expressly limit the number of occasions that a member of the bar of another state may petition to appear before our courts, the rule requires disclosure, when petitioning to appear *pro hac vice* before the trial court, of all pending causes in which the attorney has been permitted to appear. Such a requirement suggests that *pro hac vice* admission should only be occasionally permitted as a courtesy toward other state bars and not as a continuing practice to avoid membership in our bar or compliance with our disciplinary rules.

And the last shall be first

Under the recent amendments, the temporary admission process has been reversed, resulting in greater accountability. Instead of starting with the admitting court and then registering with the Clerk of the Supreme Court, the new process goes in the other direction. The foreign lawyer must first register as a prospective temporary admittee by making payment of the registration fee to the Clerk of the Supreme Court. At that time, the Clerk will issue a receipt for payment of the fee and a temporary admission attorney number. Armed with the receipt and attorney number, the foreign lawyer may then petition a court for temporary admission, making in substance the same disclosures as required by the current version of the rule. A new addition, consistent with other changes in the rule calling for more



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accountability on the part of local co-counsel, is that the petition for temporary admission must be co-signed by Indiana co-counsel. A copy of the registration fee receipt must be attached to the petition.

Upon obtaining temporary admission, the lawyer must then file the same notice with the Clerk of the Supreme Court as must be filed under the current version of the rule, with the exception that there no longer needs to be a disclosure of disciplinary actions from other jurisdictions in the notice to the Clerk. That information is already disclosed in the temporary admission petition. In the event temporary admission is denied, the foreign attorney may obtain a fee refund from the Clerk.

As with the current version of the rule, foreign lawyers, if they still have an appearance on file in any case as of Jan. 1, must still renew their temporary admission status annually by paying a registration fee to the Clerk of the Supreme Court by Jan. 30. To be relieved of the annual fee obligation, when a case ends or the foreign lawyer's involvement in the case ends, the lawyer must notify the Clerk of the Supreme Court by the upcoming Jan. 1.

Not a potted plant

As now, Indiana co-counsel must still co-sign all court filings made by a temporarily admitted lawyer. But the amended rule answers an important question not previously addressed: May a temporarily admitted lawyer appear in a proceeding before a court without Indiana counsel being present? The answer is – local counsel need not be personally present unless the court orders it.

The amended rule has some teeth in it that the current version doesn't. It explicitly states that both

the temporarily admitted lawyer and Indiana co-counsel are subject to discipline for not complying with the rule. Unlike in the past, where beyond co-signing court papers, no special role was contemplated for local counsel, Indiana counsel will become equally responsible with the foreign lawyer for compliance with the rule.

You sign it, you own it

Let's be clear about what co-signing means. The mere act of co-signing court papers "constitutes a certification by [the lawyer] that he has read the pleadings; that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay." Trial Rule 11(A). For a reminder of the fact that the role of local counsel is more than window-dressing, we need only recall *Matter of Wilkins*, 777 N.E.2d 714 (Ind. 2002); 780 N.E.2d 842 (Ind. 2003) (Rucker, J., recusing); 782 N.E.2d 985 (Ind. 2003) (rehearing granted on sanction only), *cert. denied*, 540 U.S. 813 (2003). In that case, Indiana local counsel was disciplined for signing a brief drafted

by a foreign lawyer that included unethical disparagement of a court.

This should all weigh into the pricing of local counsel services by Indiana lawyers. You cannot afford to put a price tag on your services without anticipating that you will need to read every word contained in court filings and be placing your own law license on the line behind the writings and conduct of your foreign counsel. If your foreign counsel object, show them a copy of *Wilkins*.

The Supreme Court has recognized that in appropriate circumstances foreign lawyers are a welcome presence in our courtrooms. But the devil is often in the details. It falls to local counsel to be conversant with the procedures for temporary practice and to be reliable guides for their out-of-state counsel to obtain and keep temporary admission status for the duration of a case. 🙏

The views expressed do not necessarily represent the positions of the Indiana Supreme Court or the Disciplinary Commission.