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February 23, 2023

H. Thomas Byron III, Secretary,
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Submission of a Proposal to Adopt a Rule for
Unified Bar Admission for All Federal District Courts

Dear Secretary Byron:

Enclosed is a Proposal, with three Exhibits, asking the Committee on Rules of Practice and Procedure to adopt a rule for the unified bar admission to all federal district courts. Under this Proposal, once a lawyer was admitted to one district court, the lawyer could practice in all 94 districts. The text of the proposed rule, as well as two alternatives, are set forth at the end of the Proposal, which is also posted here: https://www.lawhq.com/file/federal-court-admission-proposal.pdf.

The Proponents are fourteen law firms and non-profit organizations and six individual attorneys; they are identified in the Addendum to the Proposal. These include law firms that represent both plaintiffs and defendants, as well as non-profit organizations that lie along the ideological spectrum. Members of one of the organizations are spouses of military personnel who move frequently and for whom admission to each new district court where they live is a substantial barrier to their practicing law. Separate bar admission is especially problematic in the many districts that require admission to the local state bar, including those that insist that even attorneys with many years of practice must take the state bar exam to be admitted.

The undersigned and Thomas Alvord of the law firm LawHQ are the principal drafters of the Proposal. The Proponents would like to be notified when the Committee considers this matter in open session so that we might attend. For the convenience of the Committee, all communications can be directed to the undersigned at abmorrison@law.gwu. or 202 994 7120.

Respectfully Submitted,

Alan B. Morrison

The George Washington University Law School
2000 H Street, NW | Washington, DC 20052

February 23, 2023

BEFORE THE COMMITTEE ON

RULES OF PRACTICE AND PROCEDURE

PROPOSAL TO ADOPT A RULE FOR UNIFIED BAR ADMISSION TO ALL FEDERAL DISTRICT COURTS

The individual attorneys and organizations that are listed in the Addendum to this request (the Proponents) ask the Committee on Rules of Practice and Procedure to consider and then adopt a rule under which there would be a single application for admission to the bar of all United States District Courts. Under that rule, an attorney would apply for admission to practice in all the United States District Courts, and once admitted, the attorney could practice in all 94 districts. A draft of the proposed rule is set forth below, as are two alternative proposals that would achieve most, but not all, of the benefits of the unified rule.

Introduction & Summary of Rationale for the Rule

The question of whether local or national rules should govern admission to the bars of the district courts was raised shortly after the Federal Rules of Civil Procedure became effective in 1938. A committee of Federal District Judges, chaired by Judge John Knox of the Southern District of New York, prepared a report about local rules generally, FED. JUDICIAL CONFERENCE, REPORT ON LOCAL DIST. COURT RULES (1940), *reprinted* in 4 Fed. R. Serv. 969 (1941) (the "Knox Report"). The Report sets forth the circumstances in which the committee thought local rules might appropriately supplement the uniform civil rules. In concluding that bar admission rules were appropriate for local adoption, this was the committee's entire rationale: "[C]onsiderations of local policy and conditions play a controlling role. Calendar practice and

assignment of cases for trial is another of those subjects on which nearly every district has rules but with wide variations of detail. The necessity for these variations is readily apparent." *Id.*

There is no need to debate whether the Report's conclusion as to the desirability of having local rules for bar admission was correct in 1940. Rather, the question before this Committee is whether a uniform rule would best serve the federal courts, the attorneys who practice there, and their clients. For the reasons that follow, the answer to that question is that the time has arrived for a unified admission rule for the district courts.

The principal reason why a unified rule should be adopted is that the similarities among the practices in the district courts vastly exceed their differences. Both civil and criminal cases are now predominately governed by federal substantive law, and all procedural and evidentiary rules are federal. On the other side, multiple admissions and renewals impose significant burdens of time and expense on the federal courts, the attorneys who must obtain individual admission to numerous different districts, including pro hac vice admission, and the clients that they serve.

In 2015, the United States District Court for the District of Maryland undertook a comprehensive survey of the admission rules of the 94 district courts (the Maryland Report).[1] Although that Report is eight years old, our analysis indicates that it remains an overall accurate reflection of the status of admission rules in the district courts today. The Report is very detailed, but two significant conclusions are apparent. First, there are major differences among the districts in their requirements for admission to what is, in essence, a single court system. Second, many of the requirements are burdensome and appear to be mainly relics from a different era. This welter of requirements, and the lack of any apparent reason for these

[1] https://cdn.laruta.io/app/uploads/sites/7/legacyFiles/uploadedFiles/MSBA/Member_Groups/Sections/Litigation/USDCTMDSurvey0115.pdf.

variances, should prompt the Committee to seek a more sensible alternative to the current situation. This proposal for a one-time admission rule for all district courts is that alternative.

For the Proponents there is one particular aspect of the current situation that has impelled them to undertake prior efforts with individual district courts and to support this proposal. *See* Exhibits 1 & 2 attached. As shown in the Maryland Report, 60 of the 94 districts include in their admission rule a requirement that members of their bars be admitted to the local state court bar. That requirement is unnecessary in today's federal court litigation world, and, more importantly, it imposes on attorneys the additional annual cost of another state bar membership and/or multiple discretionary pro hac vice admissions. Moreover, the state bars in the district courts in California, Florida, Hawaii, and Delaware, all of which impose this requirement, also require even lawyers already admitted to practice elsewhere to pass their state bar exam, which is a further barrier to district court admission. *See* Exhibit 1 at 14, note 6. Prior to filing this request, many of the Proponents joined petitions to a number of district courts, asking them to eliminate the local bar requirement, but in every case their requests were rejected (without explanation) or no response was given. *See* Exhibits 1 & 2. It is therefore apparent that, if change is to occur within the federal judiciary, it can only come from this Committee.

In the sections below, we explain why a unified admission rule is desirable, and why a state bar admission requirement is unnecessary. Then we explain our main and alternative proposals. Although our request is for the adoption of a final rule, we recognize that the Committee has a process that must be followed. Accordingly, our immediate request is that the Committee consider this proposal at a forthcoming meeting and begin the process of gathering additional information that will bear on this Proposal.

The Benefits of a Single Admission Rule

Before discussing the advantages of a single admission rule, we decided to deal upfront with the issue of how the financial impact of a decision to create a unified bar admission rule should be factored into the decision. Although we do not have access to the data on how much money is received by all 94 districts from fees for regular admissions, renewals, and pro hac vice admissions, we assume it is significant, although probably not in terms of the overall budget for the federal judiciary.[2] But whatever the order of magnitude, a significant part of the revenue raised is offset by the costs incurred by the court system in administering the multiple admission system. Those include direct out of pocket expenses for printing and mailing certificates, as well as the time spent by staff in each district processing applications, reminding attorneys to renew when they fail to do so in a timely fashion, and handling situations in which an attorney has been disciplined in another jurisdiction. By contrast, a system in which an attorney will be admitted once for all district courts, and in which renewals and any disciplinary matters will be done centrally, will cut down dramatically on both out of pocket expenses and staff time. And to the extent that the current system provides additional revenue beyond the costs, we do not believe that bar admissions should be a profit center for the judiciary. In our view, a unified admission system should assure that its costs are covered, but not otherwise generate any significant net revenue.

The most obvious reason for having a unified admission system for all federal district courts is that they all operate under the same rules of civil, criminal, and bankruptcy procedure,

[2] The minimal charge for admission for all district courts is set by the Judicial Conference (28 U.S.C. § 1914). The current minimum is $188, but some courts charge more than $300. *See* Exhibit 3 at 1-2. There are also renewal fees that must be paid at various times in various amounts. *Id.* at 2.

all trials use the same federal rules of evidence, and all appeals are governed by the Federal Rules of Appellate Procedure (FRAP). Indeed, the admission rules for all the courts of appeals are governed by FRAP 46, although they are administered by the individual circuits. Under FRAP, there is one admission rule, just as the courts of the States of New York, California, Texas, and Florida, have one bar admission, even though those systems are divided in several geographic subdivisions. Under FRAP 46, as well as United States Supreme Court Rule 5.1, the sole admission requirement is that an applicant be admitted to the highest court of any state. A unified admission system for the district courts would eliminate the need for each district court to have its own staff doing admissions and renewals, handling the paperwork, and properly depositing the money received. A lawyer would have only one certificate of admission to all the federal district courts, and if an attorney were disciplined by any court, there would only have to be one federal office/court to resolve the matter.

From the perspective of attorneys, the change would simplify their lives greatly and save them significant amounts of money and time. Once admitted to one federal district court, the attorney would never have to apply to another district. The savings would be monetary – the cost of the application, plus the cost of obtaining a certificate of good standing from their principal bar – and equally important, they would not have to spend time obtaining the additional information now required in some districts as part of the application. They would also avoid the delay in their practice until their application is approved. Finally, state courts will be relieved of being asked for certificates of good standing so that attorneys can be admitted to additional federal district courts.

Because of the limitations on district court admission discussed below, lawyers often must move for admission pro hac vice in each case in which they wish to appear. The Supreme

Court has recognized the inadequacy of pro hac vice admissions because they do "not allow the nonresident attorney to practice on the same terms as a resident member of the bar. An attorney not licensed by a district court must repeatedly file motions for each appearance on a pro hac vice basis…. [T]he availability of appearance pro hac vice is not a reasonable alternative for an out-of-state attorney who seeks general admission." *Frazier v. Heebe*, 482 U.S. 641, 650-51 (1987). In addition, there is generally a fee for each case, up to $500 in one district, and some districts include annual or lifetime limits on pro hac vice admissions as well as other restrictions. *See* Exhibit 3 at 3-4. [3]

Under our proposal, a lawyer would only have to make a single application to be admitted to all federal district courts. The applicant would only have to have been admitted to practice in a single state bar (defined to include the District of Columbia and the territories of the United States). We also do not see the need for a sponsor who is admitted to the district courts, but would not oppose such a requirement.

We think it would be appropriate to require that applicants state in their application that they are familiar with the federal rules of the subject areas in which they expect to practice (*i.e.*, civil, criminal, or bankruptcy). It would also be reasonable to require applicants to affirm in their application that they recognize that most districts have local rules and that it is their responsibility to familiarize themselves with them when practicing in a new district. Our proposed rule would not preclude a district court from requiring an attorney to meet certain additional experience requirements before the attorney can be lead attorney in a civil or criminal

3 For a case in which a local rule forbids an attorney not admitted to practice before the district court from being permitted to appear in more than three unrelated cases in any twelve-month period, or in more than three active unrelated cases at any one time, where there are expected to be thousands of cases filed under a statute that requires that they all be filed in that district, see *Malafronte v. United States*, Docket No. 7:22-cv-00168 (E.D.N.C).

trial. But it would preclude a district from requiring that one of the attorneys in a case reside in or maintain an office in the district. That kind of requirement may once have been appropriate, but in the world of the Internet and videoconferencing, it cannot be justified.[4]

The Need to Eliminate Local Bar Admission Requirements

The reasons for adopting a unified rule are not what has primarily motivated the Proponents to submit their proposal. Instead, it is the requirement in sixty districts that to be admitted to practice, the applicant must be a member of the local state bar. Because that requirement is both unjustified and burdensome, and it will not be changed by the district courts that impose it, the Proponents ask this Committee to forbid district courts from requiring it, whether by issuing a unified admission rule that does not contain it, or by directing districts to remove it from their existing rules.[5]

Attached as Exhibits 1 and 2 are copies of petitions filed with various district courts seeking the elimination of the local state bar requirement and the responses to them. The local courts could not, of course, issue a unified rule, although they could have asked this Committee to do so. Exhibit 1 was filed in the Northern District of California in February 2018, and although it asked for a rule change, its immediate request was that the court publish the proposal

[4] There is also considerable academic support for reducing barriers to district court admission standards. *See e.g., The Case for a Federally Created National Bar by Rule or by Legislation*, 55 Temp. L. Q. 945, 960-964 (1982); *State Ethical Codes and Federal Practice: Emerging Conflicts and Suggestions for Reform*, 19 Fordham Urb. L.J. 969, 978 (1992); Fred C. Zacharias, *Federalizing Legal Ethics*, 73 Tex. L. Rev. 335, 379 (1994); *Reforming Lawyer Mobility—Protecting Turf or Serving Clients?* 30 Geo. J. Legal Ethics 125 (2017).

[5] Most district courts with this requirement mandate that attorneys continue their state bar membership as a condition of their district court bar membership, whereas others make exceptions. For example, the Northern District of California has a grandfathered exception in local rule 11-1. "For any attorney admitted to the bar of this court before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility." If the local state bar requirement serves any purpose at all for the federal courts, the courts that make exceptions seem particularly irrational, although less burdensome.

for public comment. Instead, less than two months later, the Chief Judge of the District advised the petitioners that their proposal had been rejected, but with no reasons given for the refusal to seek public comment. Petitioners then asked the Judicial Council of the Ninth Circuit to exercise its authority under 28 U.S.C.§ 2071(c)(1), to review and order changes to the Northern District's local bar rule. That request went unanswered for almost four years, and when a response came, it was a rejection, again without any explanation. *See* Exhibit 1.

Exhibit 2 was filed in the Eastern District of Virginia on July 5, 2022, along with similar petitions filed in fifty-nine districts that currently do not admit attorneys without a local state bar license. While some districts have responded that they will review the proposal in upcoming committee meetings, the only definitive responses so far have been rejections of the proposal, again without explanation (sample attached with Exhibit 2). Even if some, or even all, of these districts amend their rules to permit attorneys with out-of-state licenses to be admitted, that still would not achieve the simplicity and efficiency of a unified rule for district court admission.

Before the Federal Rules of Civil Procedure became effective in 1938, the district courts followed the procedural rules of the state courts in which they were located, and so it made sense to require that those who practiced in federal court be knowledgeable about the local state rules. The adoption of federal civil rules was followed by the Federal Rules of Criminal Procedure (1946) and the Federal Rules of Evidence (1975). The bankruptcy courts have always had their own rules, and their current Rules became effective in 1983. With all district court procedures federalized, that leaves only the argument that membership in the local state bar is needed

because the governing substantive law is that of the state where the district court sits. But even if true in some cases, that possibility cannot justify the local bar requirement. [6]

First, the governing law can be state law only in civil cases and only in those in which the basis for subject matter jurisdiction is diversity of citizenship. For fiscal year 2022 among the private civil cases filed, about two-thirds were diversity cases (including the large numbers in MDLs discussed below).[7] By definition, in diversity cases, with citizens from more than one state as parties, there is, generally speaking, a substantial chance that the applicable law will be that of a state other than the one in which the case was filed. As the Supreme Court noted thirty-five years ago, in a case in which it set aside a district court's residence requirement as an undue barrier to admission to its bar, "[t]here is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries." *Frazier v. Heebe,* 482 U.S. 641, 648 n.7 (1987).

Second, as the data in Exhibit 1, pp 7-8, shows, the vast majority of diversity cases involve tort and contract claims. [8] In the experience of the Proponents, the outcomes in most of those cases depend heavily on the facts, with the substantive state law playing a smaller role. And to the extent that there are issues of local state law to be resolved, there is no reason to suppose that competent lawyers on both sides will need local lawyers to assist them in making

[6] Given the increasing number of cases that are subject to MDLs, where the cases are transferred to a single district, even if a client in such cases wanted a local lawyer, that desire would be thwarted in those situations.

[7] https://www.uscourts.gov/sites/default/files/data_tables/jb_c2_0930.2022.pdf. There were 105,212 diversity cases filed and 131,131 federal question cases. In addition, there were 38,428 civil cases involving the United States. If those are included, fewer than half of all civil cases filed were diversity actions.

[8] The data in Exhibit 1 are from the fiscal year ending June 30, 2016. Because this proposal only asks the Committee to begin consideration of this matter, and because the Committee has access to much more up-to-date and more refined data than do the Proponents, we have not updated our data set at this time, but could do so if that would assist the Committee.

the legal arguments. Indeed, federal law already allows one group of lawyers who are admitted to a single bar to practice in every federal (and state) court. Under 28 U.S.C. § 517, "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." Although many cases involving the United States raise only issue of federal law, suits under the Federal Tort Claims Act are specifically based on state law under 28 U.S.C. § 2674.

Third, a local bar requirement cannot be justified on a paternalistic theory that such a rule is in the best interest of the clients. Diversity cases in federal court require a controversy of at least $75,000, and generally the amount is much larger. There is no reason to assume that the clients in those cases are unsophisticated and cannot make rational determinations about their choice of counsel, taking into account all the relevant factors, not just the governing law (if it can be known when counsel are selected). There are many ways in which clients may make unwise selections of their counsel, but except in limited situations like class actions, the federal courts do not supervise those choices. There is no reason for the district courts to do that by means of the local state bar admission rule that is found in the rules of sixty district courts.

Fourth, the trend towards states adopting the Uniform Bar Examination (UBE) has continued to accelerate. As of the time of this filing, thirty-nine of the fifty states and the District of Columbia accept the UBE, including fourteen that did not do so when the petition to the Northern District of California was filed in February 2018.[9] If most state bars now accept the

[9] https://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F196.

UBE, which covers procedure as well as substance, there can be no reason why district courts should insist on local state bar admission.

Among the holdouts from the UBE are California, Delaware, Florida and Hawaii, which have traditionally been the most restrictive in terms of bar admission generally by requiring a local state bar examination even for experienced attorneys. Each of the district courts in those states has a local state bar requirement for admission to their courts. *See* Exhibit 1 at 14, note 6. As Justice Kennedy observed in *Supreme Court of Virginia v. Friedman,* 487 U.S. 59, 68 (1988), "[a] bar examination, as we know judicially and from our own experience, is not a casual or lighthearted exercise." For lawyers who have been practicing elsewhere for a number of years, the examination requirement is particularly burdensome. The bar exam is a general test, and most lawyers specialize, and hence have no regular contact with many areas that the exam tests. Taking a bar exam also entails expenses for the exam, a prep course, and travel to the exam's location, not to mention the time away from the lawyer's practice. We do not argue that these burdens alone warrant the elimination of the local bar admission requirement, but they surely must be taken into account in determining whether that requirement should be maintained.[10]

Last, there is a trend that is significant for this proposal, which was underway when the Northern District petition was filed and has greatly accelerated in recent years: the massive increase in Multi-District Litigation (MDL) cases. Most of those cases are based on state law tort claims, mainly those involving unsafe drugs or other products. As of November 15, 2022, there were 397,845 cases pending in MDL proceedings, which were sent from all over the country under 28 U.S.C. § 1407 to a single district judge for all pre-trial matters, including

[10] Attorneys with their primary practice area in another state must pay bar dues to other states if they wish to be admitted to the federal court there. Those dues add up. The 2023 bar dues for California are $510 annually. https://www.calbar.ca.gov/Attorneys/For-Attorneys/About-Your-State-Bar-Profile/Fees-Payment.

settlements, and in some cases trials.[11] These proceedings routinely involve hundreds or thousands of cases, whose lawyers are not members of the bar of the state or federal court where the proceedings take place. Indeed, in the 3M earplug case, there are upwards of 300,000 plaintiffs. Quite sensibly, most judges in those cases do not require counsel to be admitted to the district court bar, or even require pro hac vice applications, even though almost all of those claims are based on state tort laws. If they did, their clerks' offices would be overwhelmed with processing pro hac vice paperwork.

The MDL cases are important for another reason. To our knowledge, the federal judges who handle them have never suggested that there are problems of any kind, let alone serious ones, because the lawyers are not members of the state bar of the district to which the case happens to be sent. If cases of such monetary and social significance can be litigated successfully by attorneys who are not members of the local state bar, there is no reason for that requirement to apply to any other case. In short, as the American Law Institute observed, the requirement of local bar membership "is inconsistent with the federal nature of the court's business." RESTATEMENT OF LAW, THIRD, THE LAW GOVERNING LAWYERS § 3 comment *g* (AM. LAW INST. 2000). Support for eliminating local bar admission requirements for district courts also comes from the American Bar Association (ABA). At its Midyear Meeting on February 13-14, 1995, the ABA approved a resolution stating that it "supports efforts to lower barriers to practice before U.S. District Courts based on state bar membership in cases in U.S. District Courts, through amendment of the Federal Rules of Civil and Criminal Procedure to prohibit such local rules."

[11] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-November-15-2022.pdf. As of September 30, 2022, there were a total of 596,136 civil actions including those in MDLs, which means that about two-thirds of all civil cases are now in MDL proceedings.

Finally, although the 1940 Knox Report supported local bar admission rules, the model rule that it proposed did not require membership in the local state bar. Admission to another bar was an acceptable alternative to the Knox Committee as long as "the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state." *See* Exhibit 1, Addendum at 7. If that option were satisfactory in 1940, it surely should suffice today.

The Federal Courts Today Have the Infrastructure for a Unified Admission Rule

Even if it made sense in the past to create a single admission to all federal district courts, it would have been impracticable to implement, but not today. Until recently, every federal district court maintained its own system for attorney filings, and it would have been a herculean task to enable every district court to use the same attorney registration, account management, and now, e-filing, but the situation has been changing. As of August 2022, all federal district courts now use the same system to handle all these functions.

Since 1988, each district court has managed its documents, dockets, e-filing, and its use of the PACER system which is overseen by the Administrative Office of the United States Courts. PACER has evolved and improved over time. In August 2014, the Administrative Office activated PACER NextGen. The change from PACER to PACER NextGen provided "users with several new benefits. One of these benefits is Central Sign-On, a login process which allows e-filing attorneys to use one PACER login and password to access any NextGen court (district, appellate and bankruptcy) in which they practice."[12] It took eight years for all the district courts

[12] https://www.mow.uscourts.gov/attorney/nextgen-cmecf

to make the transition to PACER NextGen, but today all federal district and appellate courts (except the Supreme Court) use PACER NextGen.

While some code changes would be necessary to update PACER NextGen to allow for a single, uniform admission to all federal district courts, these changes would be small. The PACER NextGen system is already set up for a Central Sign-On with access to all federal district courts. Attorneys already have just one username for maintaining their Pacer NextGen account, for accessing every federal district court, and for e-filing in every court. All district courts are using this same system. A change to a single admission would impose little burden, if any, on the system.

Text of Proposed Unified Admission Rule

There is hereby created a Bar of the District Court for the United States. Admission to the bar shall be governed by the provisions below and shall be administered by the Administrative Office of the United States Courts. Subject to the direction of the Judicial Conference of the United States, that Office shall set the fees for admission and renewals and shall administer a disciplinary system for admitted attorneys.

Any attorney who is a member in good standing of the bar of the highest court of any State, the District of Columbia, or any Territory, and who is currently a member of the bar of any United States District Court, shall automatically be a member of the Bar of the District Court of the United States and shall be entitled to practice before any United States District Court.

Any attorney who is a member in good standing of the bar of the highest court of any State, the District of Columbia, or any Territory, but who is not currently a member of the bar of any United States District Court, may become a member of the Bar of the District Court of the

United States by filing an application with the Administrative Office of the United States Courts showing such good standing membership.

Comment: This proposal will eliminate any role for the individual district courts in the admission, renewal, and disciplinary processes, and it will shift all those responsibilities to the Administrative Office of the United States Courts. It will also eliminate any current requirement for admission to the District Court bar beyond being a member in good standing of a state bar (broadly defined). This alternative should also drastically reduce the need for pro hac vice admissions because admission to the District Court Bar will be simple to obtain.

Reciprocal Practice Rule (First Alternative)

An attorney who is admitted to practice before any District Court of the United States shall be entitled to practice before any other District Court of the United States without being specifically admitted to the bar of that court.

Comment: This alternative would have almost the same substantive impact as the unified rule, but it would not centralize the admission, renewal, and disciplinary processes. It would still enable district courts to utilize restrictive admission requirements, but their impact would be limited to attorneys who first seek admission to those courts, and it could not prevent out-of-district attorneys from practicing in a restrictive-admission court.

Elimination of Local State Bar Admission Requirement (Second Alternative)

Rule to be issued under 28 U.S.C. § 2071.

No district court may enact a rule requiring that an attorney seeking admission to the bar of that court, including for pro hac vice admissions, must be a member of the bar, or a resident of

the state in which that court is located. Any existing rule requiring local state bar admission or in-state residence is invalid and unenforceable.

Comment: This alternative eliminates existing requirements that an applicant must be a member of the local state bar of that district or a resident of that state. The existing structures for admission, renewal, and discipline, under which those matters are handled by each district, are retained. In that respect, this alternative would be similar to FRAP 46, which eliminated prior local rules that imposed additional requirements for admission to the circuit court bars, but did not create a central admissions process.

ADDENDUM - PROPONENTS

ORGANIZATIONS AND LAW FIRMS

Alexander Dubose & Jefferson LLP, www.adjtlaw.com

CATO Institute, www.CATO.org

Clausen Miller P.C., www.clausen.com

EarthJustice, www.earthjustice.org

GuptaWessler PLLC, www.guptawessler.com,

Hamilton Lincoln Law Institute, www.hlli.org

LawHQ, P.C., www.lawhq.com

Military Spouse JD Network, www.msjdn.org

Pacific Legal Foundation, www.PacificLegal.org

Public Citizen Litigation Group, www.citizen.org

Public Justice, www.publicjustice.net

Sanford Heisler Sharp, LLP, www.sanfordheisler.com

Robins Kaplan LLP, www.robinskaplan.com

Responsive Law, www.responsivelaw.org

INDIVIDUAL ATTORNEYS

Patrick Luff, Texas

Alan B, Morrison, Washington DC

Robert Peck, Washington DC

Daniel Shih, Washington State

John Michael Traynor, California

John Vail, Washington DC -

EXHIBIT 1

February 6, 2018

PETITION OF PUBLIC CITIZEN LITIGATION GROUP & 12 OTHERS PURSUANT TO LOCAL RULE 83-2 TO AMEND LOCAL RULE 11-1(b)

This Court and the three other federal district courts in California have promulgated rules under which attorneys may not be admitted to practice in those courts unless they are active Members of the Bar of the State of California. This Petition asks this Court to amend Local Rule 11-1(b) to delete the requirement that applicants for admission to the bar of this Court must be members of the California bar. Copies of this Petition are being sent to the Clerk of each of the District Courts in the Ninth Circuit. All of those courts require that members of their bars be admitted to the state court in which the district is located. However, within the Ninth Circuit, only three States require that all applicants for admission take the bar exam for that jurisdiction (California, Nevada, and Hawaii, plus the Territories of Guam and North Marianas). NAT'L CONFERENCE OF BAR EXAM'RS AND AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 36 (2017*)* ("Nat'l Conf Report") http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html#p=48

SUMMARY OF PROPOSAL

Pursuant to Local Rule 83-2 and 28 U.S.C. § 2071(c), this Petition asks the Court to amend Rule 11-1(b), after providing notice and an opportunity to submit comments, to delete the requirement for California Bar admission, with the proposed text appearing on page 5. As more fully explained below, three reasons support this change.

(1) The requirement for California Bar admission does not bear any reasonable relationship to the actual practice in this Court because the procedures followed are established by federal rules and the issues in the vast majority of the cases in this Court arise under federal, not California law.

(2) Because the California Bar does not allow any attorney to be admitted on motion, having to take the California Bar exam imposes unjustified burdens of time and money for an attorney whose primary reason to obtain admission to that Bar is to be admitted to practice in this Court. In addition, once admitted, a lawyer must continue to be an active dues-paying member of the California Bar to remain a member of the Bar of this Court, even when a lawyer does not regularly practice in California. These burdens are wholly out of proportion to any possible benefit that might be realized for clients and the Court from imposing such a requirement.

(3) The requirements for pro hac vice admission — in particular the payment of $310 for each attorney in each case — are burdensome. The required payment must be made not only by attorneys who have a major role in a case, but also by those whose appearance is on behalf of an amicus or a class member objecting to a settlement of a class action, or in connection with motions pertaining to a subpoena issued in support of litigation pending in a different district.

THE PETITIONERS

The Addendum to this Petition describes each of the Petitioners and explains their interests in supporting the proposed rule change. The reasons for their support vary, because the petitioners represent a variety of affected persons, including non-profit organizations providing pro bono legal services; organizations of attorneys; and a

membership organization of for-profit businesses. Each Petitioner has concluded that the current requirement of membership in the California bar imposes unnecessary burdens on lawyers and clients alike, although in different ways and in different circumstances.

HISTORY OF RULE 11-1(b)

Shortly after the Federal Rules of Civil Procedure became effective in 1938, a committee of Federal District Judges, chaired by Judge John Knox of the Southern District of New York, prepared a report, FED. JUDICIAL CONFERENCE, REPORT ON LOCAL DISTRICT COURT RULES (1940), *reprinted* in 4 Fed R. Serv. 969 (1941) (hereinafter, the "Knox Report"). The Report sets forth the circumstances in which the committee thought local rules might appropriately supplement the uniform civil rules. The Report concluded that bar admission rules were appropriate for local adoption. The committee also included as an Appendix to the Report model rules for bar admission and other topics that it considered appropriate. A copy of the pages of that Appendix relating to attorney admission is included in the Addendum to this Petition.

The model rule on bar admission is noteworthy in that it did not suggest that the federal courts require admission to the bar of the state in which the federal court was located. Rather, it would have allowed admission for any attorney who was admitted by the highest court of "this state . . . or any other state" with one proviso: that the applicant "must show that at the time of his admission to the bar of that [other] court, the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state." Knox Report Appendix at 29. The committee described the proviso as "a step in the direction of higher standards for admission and will tend to make applicable to the Federal bar in any state at least the

standards which that state requires." *Id.* at 30. Thus, to the extent that the committee envisioned admission to a district court bar to exclude attorneys admitted in other states, it was solely because a particular state — not all other states — had lower standards for admission than the state where the district court was located.

This Court first enacted local rules in 1977 and amended them in 1988. On March 22, 1994, the Court appointed a committee to review all of the local rules and make suggestions for revisions. The committee issued its report on November 1, 1994, and on January 20, 1995, the Court published the report and requested comments on the proposed changes, which included a proposed change to Rule 11 on bar admission. The first ten pages of the notice and report, which include the material relevant to Rule 11, are attached (the "Notice").

At that time, this Court had no requirement that a member of the Bar of this Court be admitted to the California Bar. The committee proposed that change, among amendments that it designated "Policy Suggestions," as one that "it felt would be wise as a matter of policy." Notice at vii. In support of the change, the committee offered no studies or other evidence beyond its self-evident observations that the proposed rule "more closely restricts bar membership to members of the California bar" and that "the previous rule was less restrictive on this issue." The Rule was adopted, with no changes, but with one noteworthy feature: it allowed those attorneys who were admitted to this Court prior to the 1995 amendment to continue as members of the bar of this Court.

As a result, Rule 11-1 of this Court now provides as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court an attorney must be an active member in good standing of the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other

than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

PETITIONERS' PROPOSED RULE

Petitioners propose that the Rule be amended by deleting the following language:

> the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

In the place of the language limiting new admissions to members of the California Bar, the following language, eliminating that restriction, would be inserted: "the bar of any State, Territory, or the District of Columbia." Under this proposal, Rule 11-1(b) would read as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court, an attorney must be an active member in good standing of the bar of any State, Territory, or the District of Columbia.[1]

REASONS TO GRANT THE PETITION

1. The Current Rule Is Not Reasonably Related to Any Legitimate Purpose.

The requirement of admission to the California Bar is a barrier to admission to the federal courts in California by out-of-state attorneys in good standing where they primarily practice, and, therefore, there should be a good reason for it. This Petition is not like a court challenge to a bar admission rule in which the Court would have to give deference to the entity that issued the rule and would have to determine the appropriate level of scrutiny to apply. Because this Court has the power to change the rule whenever it finds cause to do so, the Petition need only show that the California Bar requirement is not reasonably necessary to serve a legitimate purpose.

[1] The full text of current Local Rule 11 is included in the Addendum.

(a) Federal Law Dominates the Cases in this Court.

The only possible justification for requiring licensed attorneys who wish to become members of the Bar of this Court to be admitted to the State Bar of California would be that many of the cases in this Court involve questions of California law. Yet because so many do not involve California law, that argument does not justify the rule. To begin with, federal courts apply federal procedural rules — civil, criminal, bankruptcy, and evidence, as well as the Court's local rules — to the proceedings before them. Before 1938, federal courts applied local procedural rules, and so knowing California state procedures might have made sense then, but that is no longer the case. To the extent that California Bar admission is a proxy for a lawyer being available to be in court, the increased use of electronic filing and teleconferencing has reduced the need for counsel who live and regularly practice in California. Moreover, even when motions are not decided on the papers alone, many judges hold hearings by telephone even for lawyers who have offices in the District. *See* Civ. L. R. 7-1(b).

On the substantive side, criminal cases are governed by federal criminal statutes and the Federal Rules of Criminal Procedure and the United States Constitution. Most laws at issue in bankruptcy and admiralty proceedings are federal, although issues of state law arise regarding claims in bankruptcies and may arise in other cases as well. Even then, for reasons discussed below for civil cases generally, the applicable state law may not be that of California. In short, as the American Law Institute observed, the requirement of local bar membership "is inconsistent with the federal nature of the court's business." RESTATEMENT OF LAW, THIRD, THE LAW GOVERNING LAWYERS § 3 comment *g* (AM. LAW INST. 2000).

On the civil side, cases fall into two major categories: cases arising under federal law, for which California state law is only rarely even a small part of the governing authority, and diversity cases, in which state law is the basis for the underlying claim. During the year ending June 30, 2016, 6,925 civil cases were commenced in the Northern District of California. *Statistical Tables for the Federal Judiciary*, ADMIN. OFFICE OF THE U.S. COURTS Table C-3 at 5 (June 30, 2016), http://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-june-2016. In addition, 591 criminal cases and 10,777 bankruptcy cases were filed, for a total of 18,293 cases. *Id.* Tables D at 3; Table F at 3. Among the civil actions, the United States was a party in 651, *id.* Table C-3 at 5, and pursuant to 28 U.S.C. § 517, its attorneys may appear in any court, federal or state. Of the 6,274 private cases, 1,084 were prisoner petitions, 590 were intellectual property cases, 502 were labor suits, and 963 were civil rights suits. *Id.* at 6. Complaints in these categories all appear to be based on federal substantive law, although some cases may also include closely related state-law claims under supplemental jurisdiction. Even in those "mixed" cases, the lawyer's expertise in employment, securities, or antitrust law, for example, is far more important to the client than whether the lawyer is admitted to the state court where the federal court is situated.

Of the 3,135 remaining private civil cases, 722 were contract cases, 273 were real property cases, 411 were personal injury cases, and 662 were "other tort cases," which may well include federal admiralty cases. *Id.* The remaining 1,067 cases were not categorized, but, based on their placement in the table, and the absence of any category for securities and antitrust cases, some of them are certainly cases based on federal substantive law. The Administrative Office does not publish statistics on the basis of

subject matter jurisdiction by District for *filed* cases, but from its data set on case *closings*, assisted by a researcher at the Federal Judicial Center, Petitioners were advised that there were 1,038 civil cases, based on diversity of citizenship, terminated in fiscal year 2016 in the Northern District of California. On the assumption that terminations and filings were approximately the same, diversity cases represented 16.5% of the private civil cases, but only 5.6% of the total of all cases.[2]

(b) Even Cases in This Court Involving State Substantive Law Do Not Require California Expertise.

Moreover, even when state law is significant in a particular case, the state law at issue is by no means certain to be the law of California. In diversity cases, the parties will always be from at least two jurisdictions, one of which is not California. With the laws of two or more jurisdictions a possibility, there is no particular reason to think that California law would apply even in a diversity case in federal court in California, using the applicable conflicts of laws principles (which will be decided based on the choice of law principles of the State in which the district court is located) or the choice of law provision in a contract. Moreover, a number of MDL diversity cases, including nationwide class actions, end up in California, where the judge will have to decide which state law(s) to apply to the claims. In one substantive area of law in which California is different from that of most states — it has community property — the exclusion of matrimonial cases from the scope of diversity jurisdiction, *Ankenbrandt v. Richards*, 504

[2] The Northern District's caseload is in line with the national numbers. Thus, of the 1,187,854 cases filed in all district courts for the 12 months ending March 31, 2016, 833,515 were bankruptcy cases, 79,787 were criminal cases and 274,552 were civil cases of which only 82,990 (7.0% of total filings and 30.2% of civil filings) were diversity cases. *Federal Judicial Caseload Statistics*, ADMIN. OFFICE OF THE U.S. COURTS (Mar. 31, 2016), http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2016.

U.S. 689 (1992), makes it unlikely that community property issues will arise with any frequency in this Court. To be sure, some cases in this Court involve questions of California law. But even in that subset of cases, there is no reason to presume that private lawyers who practice primarily outside of California are not fully qualified to represent their clients in those cases.

Two other reasons show that close familiarity with the substantive law of a particular state is not likely to be a significant factor in most federal court litigation. First, advising a client in advance about state law is quite different from handling a lawsuit after the claim has arisen. In the former situation, knowledge of the law can help avoid problems by careful planning, but that is no longer an option once the breach of contract or harm constituting a tort or a violation of another law has occurred. At that point, the role of the lawyer is to research existing law and apply it to the facts of the case, rather than predict what problems might arise and anticipate how to avoid them. Second, good litigators, which describes most of the lawyers who handle civil cases in federal courts, are used to venturing into new areas of substantive law; indeed, that is one of the skills that makes them good litigators. Thus, even if there are nuances of California law at issue in a given case, that is a common aspect of practice for a federal court litigator.

(c) Other Aspects of the Current Rule Show that the California Bar Admission Requirement is Unnecessarily Burdensome.

Two features of the current rule undermine any purported basis for the requirement of California Bar admission. First, the rule makes an exception for attorneys who were admitted to the Bar of this Court prior to September 1, 1995, based on admission to the bar of another State, even if they still are not admitted in California.

That exception shows that the Court recognizes that litigants, opposing counsel, and the judges of this Court are able to conduct litigation with lawyers who have been admitted to the Bar of the Court, but not the California Bar.[3]

Second, the current rule requires that attorneys must continue to be "active" members of the California Bar. As a result, if a California attorney moves his or her primary practice to another jurisdiction, the right to practice in this Court will depend on whether the attorney continues to pay the $410 that is currently charged active California lawyers, as well as the costs to comply with the CLE requirement of the California Bar (25 hours of CLE every three years, http://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements). The CLE requirement may not dovetail with any CLE requirements of the lawyer's primary bar, and may require the lawyer to incur substantial additional costs.

Moreover, the requirement for admission to the local state court as a condition of admission to the federal court inevitably restricts clients' choices of who their attorneys will be. That limitation is unjustified because there is no reason to assume that clients with cases in this Court will not be able to make a proper assessment as to whether the case is one in which knowledge of local law is important or whether their preferred lawyer is able to handle the matter, even with local law issues as part of the mix. Federal court diversity contract or property claims typically involve significant matters, for which the client is either sophisticated or has advice of in-house counsel. As for plaintiffs in tort actions, there is no reason to think that the market for cases in the federal courts is so

[3] The fact that former members of the California Bar admitted to this Court after September 1995 are removed from the Court's bar if they retire from the California bar, even while maintaining active status in the bar of another state, further shows the arbitrariness of the current rule.

imperfect that this Court needs to require that the plaintiff hire a lawyer who is a member of the California Bar for cases in this Court, regardless of how insignificant issues of California law may be to the outcome. The argument to allow client choice is even stronger, and the local law rationale even less weighty, in federal question, criminal, and bankruptcy cases, yet the California Bar admission requirement applies to those lawyers who only handle cases arising under federal law.

In addition, the rules of professional responsibility and the legal malpractice laws protect clients from unqualified and unethical lawyers, far more effectively than the rule requiring California Bar admission. Local Rule 11-4(a)(1) of this Court incorporates the State Bar of California's Rules of Professional Conduct, including Rule 3-110 which states:

> (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
>
> (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.
>
> (C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

Finally, under the current Rule, if a client prefers to have as lead counsel a lawyer who is not eligible to become a member of the Bar of this Court, that will generally require retaining and paying for local counsel, not just to sign papers, but, for at least some judges, to appear in court. *See* Civil L.R. 11-3(a)(3), (e). Unless there is some reason to believe that clients cannot make appropriate decisions about which lawyer they

want to represent them in federal court litigation, a local rule insisting that clients prefer California lawyers, no matter what the legal and factual issues may be, is very hard to justify.

2. California Bar Admission Is Burdensome.

Because California does not allow admission on motion and does not provide for admission on a reciprocity basis, the burden imposed by this Court's admission rule is even greater. Even if California allowed admission on motion or through reciprocity, Petitioners would nonetheless urge this Court's to revise its rule for the reasons set forth in the prior section. Nonetheless, the requirements for admission to the California State Bar exacerbate the problem.

Everyone, no matter how long they have practiced law, no matter if their work specializes in a single subject, even one dominated by federal law, must pass the California Bar exam to be admitted to the State Bar, and thus to be eligible for admission to the Bar of this Court. As Justice Kennedy observed in *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 68 (1988), "[a] bar examination, as we know judicially and from our own experience, is not a casual or lighthearted exercise." For lawyers who have been practicing elsewhere for a number of years, the exam requirement is particularly burdensome. The bar exam is a general test, and most lawyers specialize, and hence have no regular contact with many areas that the exam tests. As a result, a practicing lawyer will probably have to take a not-inexpensive California Bar prep course,[4] especially given the low pass rate for the California bar (35.3% for the February 2017 exam),

[4] Kaplan's discounted courses currently are priced between $1699 and $2399. *California Bar Review Course*, KAPLAN (last visited Jan. 31, 2018), https://www.kaptest.com/bar-exam/courses/california-bar-review-course?state=california.

including the attorneys-only exam (44.5% for the same exam). *General Statistics Report, February 2017 California Bar Examination*, THE STATE BAR OF CAL. (Mar. 26, 2017), http://www.calbar.ca.gov/Portals/0/documents/admissions/Statistics/FEB2017STATS.052617_R.pdf.

In contrast to an experienced lawyer who decides to live and work in California, it is very hard for litigating lawyers practicing elsewhere to justify taking the time away from pending matters, which may result in a substantial loss of income, to take a state bar exam that is needed only to be admitted to the federal district courts of that state in order to handle an occasional matter there. Finally, the attorney exam itself costs $983, and once admitted, the lawyer must pay $410 per year to the California Bar, which the lawyer would not pay except to continue to be a member of the bar of this Court.[5]

Whether California Supreme Court is justified in continuing to insist that all applicants must take the California Bar exam is not the question that this Court must decide. Rather, given the admitted difficulty in obtaining bar admission in California, the question is whether this Court is justified in insisting that applicants for admission satisfy that requirement in addition to being in good standing in another State or the District of Columbia. And on that question, the answer is decidedly "No."

The four district courts in California that require admission in the State court are not unique among the federal district courts. However, the combination of State court bar admission and requiring all bar applicants to take the bar exam places those courts in a distinct minority. A majority of district courts nationwide require admission to the local

[5] There is also a $153 laptop charge for the exam. *Schedule of Fees*, THE STATE BAR OF CAL. (last visited Jan. 31, 2018), https://www.calbarxap.com/applications/CalBar/info/fees.html.

State Bar, but only eight of the States comprising those districts require all applicants to take their state's bar exam.[6] As petitioners explain above, we see no connection between being admitted to the bar of the state where a federal district court is located, and the ability to provide quality legal services in that court. We therefore oppose all such requirements as unnecessary anywhere. The requirement is also unduly burdensome for the additional reasons that admission to the California Bar requires every applicant to pass the California Bar exam and continue to be an active dues-paying member of that bar.

3. Pro Hac Vice Admission Is Not A Feasible Alternative.

The third factor compounding the problem for lawyers and clients with cases in this Courts is that admission on a pro hac vice basis is not a feasible option for several reasons. First, it is available only with the cost and burden of having local counsel in the case. N.D. Cal. Civ. R. 11-3(a)(3). Second, pro hac vice admission is not automatic, although most pro hac vice motions are granted, with no apparent requirement that the Court determine whether there are any issues of California state law in the case and whether the attorney seeking admission is qualified to handle them. Far from supporting the current practice, the ease of admission suggests that there is no real reason to have the California Bar admission requirement in the first place.

[6] The other state bars that do not allow admission on motion are Delaware, Florida, Hawaii, Louisiana, Nevada, Rhode Island and South Carolina, plus Guam and the Northern Mariana Islands. Of these, Rhode Island requires that attorneys admitted elsewhere only have to take the essay portion of the Rhode Island Bar Exam. In February 2017, South Carolina began using the Uniform Bar Exam, which will make it easier to gain admission to its bar, but not eliminate the cost of application and annual dues. NAT'L CONF REPORT, *supra* note 1, at 21-22, 27, 32, 36-37, http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html.

Third, the charge of $310 is for *each* individual attorney's pro hac vice admission in *each* case, and is presently the second highest pro hac vice admissions fee in the United States. The charge is the same as the fee for permanent admission to the bar of this Court, and payment is required even if it the lawyer is simply objecting to a class action settlement or seeking to file an amicus brief. In this respect the fee operates like a toll on access to justice and is particularly harmful where a lawyer is handling a matter on a pro bono basis. For these reasons, pro hac vice admission is not a substitute for full admission, and the pro hac vice rule does not create a feasible alternative.[7]

4. State Bar Admission Is Not Needed to Discipline Unethical Attorneys.

Courts have a legitimate interest in being able to assure that Members of their Bar are subject to discipline by them. Eliminating the requirement that a lawyer be admitted to the State Bar in the district in which the federal court sits would not present a problem in this regard, especially when compared with the situation in which a lawyer is admitted pro hac vice. First, a Member of the bar of this Court who acts contrary to court rules may permanently lose the right to practice in this Court, whereas an attorney admitted pro hac vice will mainly lose the opportunity to participate in one case.

Second, if a lawyer is disciplined in one jurisdiction, that information is generally forwarded to all other jurisdictions in which the lawyer is admitted, which may not include places in which the lawyer is admitted for one case on a pro hac vice basis.

Third, the best proof that discipline is not a problem is the fact that many districts do not require admission to the local state bar, and there is no evidence of which we are

[7] Rule 11-3(b) imposes additional restrictions on pro hac vice admission. With certain limited exceptions, an applicant is not eligible for pro hac vice admission if she or he "**(1)** Resides in the State of California; or **(2)** Is regularly engaged in the practice of law in the State of California."

aware that those districts are having any discipline problems with out of state attorneys who are Members of their Bar.

Finally, the Court has, unintentionally, conducted a limited experiment on whether there would be any discipline or other problems from an attorney's lack of admission to the California bar, and so far as Petitioners can determine, there are no reports of such problems. The experiment arose from the express exception created in 1995 for attorneys who are not members of the California Bar, but who had previously been admitted to the Bar of this Court. If any problems arose from that general exception, they surely would have surfaced in the intervening 23 years, and the fact that they have not provides further support for the conclusion that the requirement of membership in the California Bar to be eligible for membership in the Bar of this Court should be deleted, and the Petition granted.

CONCLUSION

For the foregoing reasons, the Court should institute a notice and comment rulemaking proceeding that would eliminate the requirement that an attorney must be a member of the State Bar of California to be a member of the Bar of this Court from Rule 11-(b), which would then read as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court, an attorney must be an active member in good standing of the bar of any State, Territory, or the District of Columbia .

Respectfully Submitted

Alan B. Morrison
D.C. Bar No. 073114
George Washington University Law School
2000 H Street NW
Washington, D.C. 20052
202 994 7120
abmorrison@law.gwu.edu

Mark A. Chavez
CA Bar No. 090858
Chavez & Gertler LLP
Miller Avenue
Mill Valley, CA 94941
(415) 381-5599
mark@chavezgertler.com

Counsel for Petitioners

ADDENDUM

DESCRIPTIONS OF PETITIONERS

Public Citizen Litigation Group is a public-interest law firm within the non-profit consumer advocacy organization Public Citizen Foundation. Our lawyers are located in the District of Columbia, but regularly appear in cases in federal courts across the country, including in the Northern District of California. At times during the firm's 45 years, we have represented in the Northern District clients litigating as parties, clients filing as amicus curiae, clients appearing as objectors to proposed class action settlements, and "John Does" challenging subpoenas to Internet Service Providers seeking information to identify the Does. In each case, we represent the client on a pro bono basis, although where we represent a plaintiff we may seek an award of attorney fees when we prevail. Currently, none of our attorneys is admitted to practice in the Northern District. Therefore, to appear in the Northern District, we must find local counsel, generally also pro bono, and the attorney from our office with primary responsibility must apply for pro hac vice admission and pay a fee, currently $310. The requirement of paying a pro hac fee applies even to our staff attorney who is a member of the California Bar but on inactive status, because the Northern District of California deems a lawyer "inactive" who is on inactive status with the California Bar. Another of our attorneys was previously admitted to the Northern District but lost her admission after approximately 15 years, when she voluntarily retired from the California Bar (but retained her membership in the Bar of the District of Columbia).

American Civil Liberties Union is a national civil liberties and civil rights organization founded in 1920 with affiliates or chapters in every state. It often litigates cases in California federal courts, and the rule as it stands is an impediment to its doing so, and to its working with attorneys who are not members of the California state bar, even if those attorneys are fully capable of and deeply versed in litigating in federal court. For the reasons elaborated in the petition, it supports the requested rule change.

Association of Corporate Counsel, is a global bar association of over 40,000 in-house attorneys who practice in the legal departments of more than 10,000 organizations located in at least 85 nations. It strongly supports the amendment by this court of Local Rule 11.1(b) to delete the requirement of membership in the California bar in order to be admitted to the bar of this Court. Our members' companies may be involved in litigation in this district and wish to use the expertise of our members, as well as outside counsel, who may not be California bar members but who would be the most knowledgeable and efficient choices for their legal work. These in-house and outside counsel, admitted in other jurisdictions, perform for sophisticated corporate clients and should be allowed to practice in federal court without the unnecessary burden of gaining admission to the California bar.

Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato files *amicus* briefs in cases arising around the country, and thus has an interest in

ensuring reasonable admission rules in all jurisdictions that permit the filing of *amicus* briefs, including the Northern District of California. *See, e.g., Google LLC v. Equustek Solutions, Inc.*, No. 5:17-cv-04207-EJD, Dkt. 27 & 40 (N.D. Cal.). As a non-profit organization, Cato is especially sensitive to litigation costs, and high pro hac admission fees may preclude us from filing. Cato also has a larger institutional interest in vindicating the right to choice of counsel, both as a general means of securing access to justice for all litigants, and also as a component of criminal defendants' Sixth Amendment right to the assistance of counsel. Cato supports the petition because the proposed rule change would enable parties to choose from a wider range of qualified counsel and secure representation at lower cost.

Center for Constitutional Litigation, P.C. (CCL) is a law firm located in New York, NY with a nationwide practice, that occasionally has cases and currently has one case pending in the Northern District of California, though no lawyer in the firm is admitted to that court's bar or the bar of the State of California. In that case, CCL lawyers represent the City of Oakland in *City of Oakland v. Wells Fargo & Co.*, Case No. 3:15-cv-04321-EMC, having been admitted *pro hac vice*. Because our practice takes our lawyers into federal and state courts throughout the nation, CCL is keenly interested in the rules that govern its admission to the bar of this Court. When lawyers in the firm have cases in the Northern District, they must associate with (and pay) local counsel, whether that is in the best interests of their clients and they must apply for and pay for pro hac vice admission in each case in which they are counsel.

Competitive Enterprise Institute's Center for Class Action Fairness represents class members pro bono against unfair class action procedures and settlements. With a high volume of class actions filed in the Northern District, we regularly appear in the Northern District on behalf of individual class members objecting to unfair class action settlements. We handle all of these cases pro bono, although we may seek attorneys' fees where our work substantially improves a settlement. Only one of our five attorneys is admitted to the Northern District and is a member of the California bar. Because a large percentage of our caseload is in the Northern District, it is impractical for that single attorney to handle all of our work in the Court. As a result, our other attorneys often must apply for pro hac vice admission and pay the $310 fee, instead of paying the identical Northern District bar admission fee only once. We also are required to retain local counsel who are physically present in the district in such cases, even though those local counsel add nothing to our understanding of the local rules or the underlying law. This adds thousands of dollars a case to our expenses. Combined with the expense of litigating across the country and our limited budget, it has affirmatively deterred us from participating in meritorious litigation.

Consumers for a Responsive Legal System ("Responsive Law") is a non-profit organization located in Washington, D.C. Responsive Law seeks to make the legal system more affordable, accessible and accountable to ordinary Americans. Responsive Law believes that requiring state bar membership for an appearance in federal court provides no benefit to individuals and small businesses seeking counsel for matters before a federal court. It does, however, limit the number and variety of lawyers from

whom a litigant can select its counsel, thereby restricting consumer choice and artificially raising costs for parties in federal litigation. Unchecked protectionism of this sort is one of the reasons why the United States currently ranks 94th out of 113 countries in "affordable and accessible civil justice" according to the most recent Rule of Law Index issued by the World Justice Project.

Earthjustice is a non-profit public interest law firm. Earthjustice is headquartered in San Francisco, has an office in Los Angeles, and maintains additional offices in Alaska, Hawaii, Washington, Colorado, Montana, Pennsylvania, Florida, New York and Washington D.C. Although a number of attorneys in Earthjustices's California offices are admitted to and practice in the Northern District, some of Earthjustices's litigation in this District is handled by attorneys who are not based or barred in California, and sometimes these non-California attorneys co-counsel a case in this District with an attorney who is admitted here. If these non-California attorneys were admitted to the Northern District bar, they would not need local counsel and would not have to pay the $310 pro hac vice filing fee for each case on which they worked.

Natural Resources Defense Council is a non-profit advocacy organization with members throughout the United States. NRDC is headquartered in New York, and maintains non-California offices in Illinois, Montana, and Washington, DC, as well as in San Francisco and Santa Monica, California. Although a number of attorneys in NRDC's California offices are admitted to and practice in the Northern District, some of NRDC's litigation in this District is handled by attorneys who are not based or barred in California, and sometimes these non-California attorneys co-counsel a case in this District with an attorney who is admitted here. If these non-California attorneys were admitted to the Northern District bar, they would not need local counsel and would not have to pay the $310 pro hac vice filing fee for each case on which they worked.

Pacific Legal Foundation (PLF) is a national pro bono public interest litigation firm with offices in California, Washington, Florida, and Virginia. A number of PLF attorneys are members of the bar associations of states other than California, although most PLF attorneys are also members of the California State Bar. PLF litigates constitutional and other claims on behalf of its clients in federal courts across the nation. PLF attorneys are experts in several areas of federal law, including property rights and permit exactions, federal environmental law (particularly the Clean Water Act and Endangered Species Act), race and sex preferences and discrimination, and freedom of speech and association. These legal fields employ a more or less unified national body of federal case law that is applicable in all federal courts. In litigating claims grounded in these fields, PLF attorneys' credentialing by the state bar association for the state in which the federal district court sits is not germane to their ability to represent clients and serve as officers of the federal district court. These attorneys' original credentialing as lawyers by any state bar adequately serves these purposes. The Northern District's rule requiring members of the Northern District Bar to first be members of the California State Bar serves no purpose that membership in another state bar association does not serve, and impedes PLF attorneys who are not California State Bar members from carrying out their

public interest mission in representing clients with federal law claims that are properly venued in the Northern District of California.

Robert S. Peck is president of the Center for Constitutional Litigation, P.C. (CCL), a law firm located in New York, NY, and is admitted to practice in the State of New York and the District of Columbia. He is admitted to practice and has handled cases in the Supreme Court of the United States, six federal circuit courts of appeal, and five U.S. District Courts, while also having appeared pro hac vice in four other federal circuit courts and 13 other U.S. District Courts. In addition, he has litigated cases in state court in 25 states. Because his practice occasionally takes him to various federal district courts in California, including a current matter pending in the Northern District of California, he is keenly interested in the rules that govern admission to practice in the Northern District. Currently, when litigating in that court, he must associate with (and pay) local counsel, whether that is in the best interests of his clients and must apply for and pay for pro hac vice admission in each case in which he is counsel.

Public Justice is a national public interest advocacy organization headquartered in Washington D.C. with a branch office in Oakland, California. Our in-house staff attorneys team with private attorneys around the country to fight injustice and preserve access to the courts for ordinary people. The bulk of our litigation is in the federal courts. Public Justice is supported by the membership contributions of thousands of attorneys nationwide, many of whom are not members of the California bar and hence are not eligible to be members of the Northern District bar. Instead, when they have cases in the Northern District, they must associate with (and pay) local counsel, whether or not that is in the best interests of their clients, and they must apply for and pay for pro hac vice admission in each case in which they are counsel. We support the petition because we believe that the current admissions rules in this District are unduly restrictive and burdensome. In addition, we believe that the choice of whether to have a lawyer admitted to the state court in which the federal court sits is one that should be left to the client and the client's counsel, not imposed on the client by the Northern District rules.

John Vail is the principal of John Vail Law PLLC, a law firm located in Washington, DC, and devoted to appellate and motions practice throughout the United States. Mr. Vail is admitted to the bars of Tennessee, New Mexico, North Carolina, and the District of Columbia, and to numerous federal district and appellate courts, including the Supreme Court. He has served as counsel in cases in state and federal courts in California. He has expended significant time and effort being admitted pro hac vice in courts around the country. He has been consulted about appearing in cases pending in the Northern District. The current rules regarding admission impede him from appearing there.

LOCAL RULE 11-1 (Current Version)

11-1. The Bar of this Court.

(a) Members of the Bar. Except as provided in Civil L.R. 11-2, 11-3, 11-9 and Fed. R. Civ. P. 45(f), an attorney must be a member of the bar of this Court to practice in this Court and in the Bankruptcy Court of this District.

(b) Eligibility for Membership. To be eligible for admission to and continuing membership in the bar of this Court an attorney must be an active member in good standing of the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

(c) Procedure for Admission. Each applicant for admission must present to the Clerk a sworn petition for admission in the form prescribed by the Court. Prior to admission to the bar of this Court, an attorney must certify:

(1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of this Court;

(2) Familiarity with the Alternative Dispute Resolution Programs of this Court;

(3) Understanding and commitment to abide by the Standards of Professional Conduct of this Court set forth in Civil L.R. 11-4; and

Familiarity with the Guidelines for Professional Conduct in the Northern District of California.

(d) Admission Fees. Each attorney admitted to practice before this Court under this Local Rule must pay to the Clerk the fee fixed by the Judicial Conference of the United States, together with an assessment in an amount to be set by the Court. The assessment will be placed in the Court Non-Appropriated Fund for library, educational and other appropriate uses.

(e) Admission. Upon signing the prescribed oath and paying the prescribed fees, the applicant may be admitted to the bar of the Court by the Clerk or a Judge, upon verification of the applicant's qualifications.

(f) Certificate of Good Standing. A member of the bar of this Court, who is in good standing, may obtain a Certificate of Good Standing by presenting a written request to the Clerk and paying the prescribed fee.

(g) Reciprocal Administrative Change in Attorney Status. Upon being notified by the State Bar of California (or of another jurisdiction that is the basis for membership in the bar of this Court) that an attorney is deceased, has been placed on "voluntary inactive" status or has resigned for reasons not relating to discipline, the Clerk will note "deceased," "resigned" or "voluntary inactive," as appropriate, on the attorney's admission record. An attorney on "voluntary inactive" status will remain inactive on the roll of this Court until such time as the State Bar or the attorney has notified the Court that the attorney has been restored to "active" status. An attorney who has resigned and wishes to be readmitted must petition the Court for admission in accordance with subparagraphs (c) and (d) of this Rule.

(1) The following procedure will apply to actions taken in response to information provided by the State Bar of California (or of another jurisdiction or other jurisdiction that is the basis for membership in the bar of this Court) of a suspension for **(a)** a period of less than 30 days for any reason or **(b)** a change in an attorney's status that is temporary in nature and may be reversed solely by the attorney's execution of one or more administrative actions. Upon receipt of notification from the State Bar that an attorney has been suspended for any of the following, the Clerk will note the suspension on the attorney's admission record:

(A) Noncompliance with Rule 9.22 child and family support;

(B) Failure to pass PRE;

(C) Failure to pay bar dues;

(D) Failure to submit documentation of compliance with continuing education requirements.

While suspended, an attorney is not eligible to practice in this Court or in the Bankruptcy Court of this District. In the event that an attorney files papers or otherwise practices law in this Court or in the Bankruptcy Court while an administrative notation of suspension is pending on the attorney's admission record, the Clerk will verify the attorney's disciplinary status with the State Bar (or other jurisdiction, if applicable). If the attorney is not then active and in good standing, the Chief District Judge will issue an order to show cause to the attorney in accordance with Civil L.R. 11-7(b)(1).

Upon receipt by the Court of notification from the State Bar that the attorney's active status has been restored, the reinstatement will be noted on the attorney's admission record.

(2) In response to information provided by the State Bar of California (or other jurisdiction that is the basis for membership in the bar of this Court) that an attorney has been placed on disciplinary probation but is still allowed to practice, the Clerk will note the status change on the attorney's admission record. An attorney with that status must, in addition to providing the notice to the Clerk required by Civil L.R. 11-7(a)(1), report to the Clerk all significant developments related to the probationary status. Upon receipt by the Court of notification from the State Bar that the attorney's good standing has been restored, the change will be noted on the attorney's admission record.

KNOX REPORT RULES APPENDIX
ATTORNEYS' PORTION

SUGGESTED LOCAL RULES FOR THE UNITED STATES DISTRICT COURTS

Rule 1. Attorneys.

(a) ***Roll of Attorneys.*** **The bar of this court consists of those heretofore and those hereafter admitted to practice before this court, who have taken the oath prescribed by the rules in force when they were admitted or that prescribed by this rule, and have signed the roll of attorneys of this district.**

(b) ***Eligibility.*** **Any person who is a member in good standing of the bar of (1) the highest court of this state or of (2) the highest court of any other state, is eligible for admission to the bar of this court, but any person who may apply for admission to the bar of this court on the basis of his admission, after the effective date of this rule, to the bar of the highest court of any other state must show that at the time of his admission to the bar of that court, the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state.**

Note. **It is stated elsewhere in this report that nation-wide uniformity regarding eligibility for admission to practice in the various district courts is neither feasible nor desirable. However, since nearly every district has rules on this subject, and since some of those rules seem to make possible the infiltration of unfit persons into the Federal bar, and since some are couched in archaic and obscure language, this draft is presented for the consideration of those judges who may feel that the substance of the practice which it states would fit the needs of their respective districts. It will be noted that the draft contains a proviso that will be a step in the direction of higher standards for admission and will tend to make applicable to the Federal bar in any state at least the standards which that state requires.**

(c) *Procedure for Admission.* Each applicant for admission to the bar of this court shall file with the clerk a written petition setting forth his residence and office addresses, his general and legal education, and by what courts he has been admitted to practice. If he is not a resident of this [district] [state] [and] [or] does not maintain an office in this [district] [state] for the practice of law, he shall designate in his petition a member of the bar of this court who maintains an office in this [district] [state] for the practice of law with whom the court and opposing counsel may readily communicate regarding the conduct of cases in which he is concerned, and he shall append to his petition the written consent of the person so designated. The petition shall be accompanied by certificates from two reputable persons who are either members of the bar of this court or known to the court, stating how long and under what circumstances they have known the petitioner and what they know of the petitioner's character. If a certificate is presented by a member of the bar of this court, it shall also

state when and where he was admitted to practice in this court. The clerk will examine the petitions and certificates and if in compliance with this rule, the petitions for admission will be presented to the court at the opening of the first ensuing session which convenes not earlier than _ days after the filing of the petition. When a petition is called, one of the members of the bar of this court shall move the admission of the petitioner. If admitted the petitioner shall in open court take an oath to support the Constitution and laws of the United States, to discharge faithfully the duties of a lawyer, and to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he shall, under the direction of the clerk, sign the roll of attorneys and pay the fee required by law.

***Note.* It has been suggested that the rule should**

provide for the appointment of a committee of the bar to pass upon applications and, if necessary, examine the applicants personally. Rules of this character have long been in force in the district court of Massachusetts and have been incorporated into new rules in Arkansas and Oklahoma. Although the committee recognizes the desirability of such a procedure for some courts, it does not feel that it is necessary in the majority of districts and, therefore, it has not incorporated the provision into this rule. For judges who desire to inaugurate such a practice, the Arkansas, Massachusetts, and Oklahoma rules will serve as helpful guides.

It will be noted that the proposed rule provides that the petitions and certificates are to be presented to the court by the clerk "at the opening of the first ensuing session which convenes not earlier than — days after

the filing of the petition." This, of course, is a routine matter for the clerk and the provision must be varied to conform to the custom of the particular district concerned.

The alternative bracketed words "[district] [state]" in lines 28,29,30 and 33 are presented in consequence of the fact that in states where there are more than one district, the situations differ so that choice is essential.

For example, in New York there is no valid or practical distinction so far as the New York City bar is concerned between the Southern and Eastern districts of New York, and opinion, therefore, supports a requirement not measured by the district. In general, the word "state" should be used except where special reasons exist for limiting the rule to the "district."

(d) ***Permission to Participate in a Particular Case.*** **Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not eligible for admission to the bar of this district under subdivision (b) of this rule, may be permitted to appear and participate in a particular case. In his application so to appear he shall make the designation and append thereto the consent which are required by subdivision (c) of this rule from non-resident applicants for admission to the bar of this court.**

(e) ***Disbarment and Discipline.*** **Any member of the bar of this court may for good cause shown and after an opportunity has been given him to**

be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper.

Whenever it is made to appear to the court that any member of its bar has been disbarred or suspended from practice or convicted of a felony in any other court he shall be suspended forthwith from practice before this court and, unless upon notice mailed to him at his last known place of residence he shows good cause to the contrary within_ days, there shall be entered an order of disbarment, or of suspension for such time as the court shall fix.
Any person who before his admission to the bar of this court or during his disbarment or suspension, exercises in this district in any action or proceeding pending in this court any of the privileges of a member of the bar or who pretends to be entitled so to do, is guilty of contempt of court and subjects himself to appropriate punishment therefor.

Note. **This subdivision is in accord with Rule 2 (5) of the Rules of the Supreme Court of the United States and the decision of that Court in *Selling* v. *Radford* (243 U. S. 46).**

NOTICE OF PROPOSED RULES CHANGES
NDCA JANUARY 1995

RULES COMMITTEE
OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Avenue
San Francisco, California 94102

January 20, 1995

TO: MEMBERS OF THE PUBLIC

FROM: JUDGE JAMES WARE, CHAIR

The United States District Court for the Northern District of California proposes to revise its Local Rules and has authorized circulation of the proposed revisions to the public generally for comment. The proposed revisions are intended to accomplish three primary objectives: (1) to conform the Local Rules to amendments to the national rules; (2) to renumber the local rules to correspond to the numbering of the national rules; and (3) to incorporate procedures which were tested under a pilot program pursuant to the Civil Justice Reform Act and which have been shown to be effective to secure the just, speedy and inexpensive determination of matters before the Court.

Enacted in 1977, the Local Rules of the Court are intended to supplement the national rules. They were last revised on November 1, 1988. Since 1988 amendments have been made to the national rules without corresponding amendments to applicable Local Rules. Effective December 1, 1993, a major amendment was made to the Federal Rules of Civil Procedure. In addition, over the course of time, the Court received numerous suggestions for modifications to its Local Rules from the bench and bar.

In 1993, Chief Judge Thelton E. Henderson requested the Rules Committee of the Court to undertake a major revision of the Local Rules. On March 22, 1994, pursuant to 28 U.S.C. § 2077, Chief Judge Henderson appointed an Advisory Committee on Civil Rules. The Advisory Committee was requested to review the Local Rules of the Court and to issue a report and recommendation to the Court.

On November 1, 1994, the Advisory Committee issued its report and recommendations, which were referred to the Rules Committee of the Court. The Rules committee considered the report and recommendations of the Advisory Committee, as well as suggestions from other sources. On January 10, 1995, the Rules Committee presented its proposed revisions of the Local Rules to the Court, which approved their publication for public comment.

The proposed revisions include modifications to the Bankruptcy Local Rules. October 22, 1994, the Bankruptcy Reform Act of 1994 became effective. It made comprehensive changes in the Federal Rules of Bankruptcy Procedure. The Bankruptcy Court for this District proposes to amend its Local Rules to reflect those amendments and to coordinate the numbering of the proposed Bankruptcy Local Rules with the proposed revisions of the Civil Local Rules.

The Court has not approved these proposed revisions but submits them for public comment. We request that all comments and suggestions be sent as soon as convenient and, in any event, no later than **April 20, 1995** to:

Judge James Ware
Chair of the Rules Committee
280 South First Street
San Jose, California 95113

At the conclusion of the comment period, the Rules Committee will consider the proposed revisions in light of any comments and will make recommendations to the Court. If adopted, the Revised Local Rules would become effective on July 1, 1995.

RULES COMMITTEE
OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

District Judge, James Ware, Chair
United States Courthouse
280 South First Street
San Jose, California 95113

District Judge William H. Orrick, Jr.
United States District Court
450 Golden Gate Avenue
San Francisco, California 94102

District Judge Marilyn Hall Patel
United States District Court
450 Golden Gate Avenue
San Francisco, California 94102

Magistrate Judge Joan S. Brennan
United States District Court
450 Golden Gate Avenue
San Francisco, California 94102

Bankruptcy Judge Randall Newsome
United States Bankruptcy Court
1300 Clay Street, Room 300
Oakland, California 94612

ADVISORY COMMITTEE ON CIVIL LOCAL RULES

Professor Richard Marcus, Chair
University of California
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102

Pauline Fox
Pillsbury, Madison & Sutro
235 Montgomery Street

Jerrold M. Ladar
507 Polk Street, Suite 310
San Francisco, CA 94102

Joseph Franaszek
35 Bonnie Lane
Berkeley, CA 94708

Amitai Schwartz
155 Montgomery St., Ste 800
San Francisco, CA 94104

Robert Goodin
Armour, Goodin, Schlotz & MacBride
505 Sansome Street, 9th Floor
San Francisco, CA 94111

Mimi Arfin, ADR
U.S. District Court
450 Golden Gate Avenue
San Francisco, CA 94102

John Hauser
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center, Suite 2800
San Francisco, CA 94111

Mary Beth Uitti
Assistant U.S. Attorney
450 Golden Gate Avenue
San Francisco, CA 94102

Daniel Johnson, Jr.
Cooley, Godward, Castro, Huddleson & Tatum
Five Palo Alto Square, Fourth Floor
Palo Alto, CA 94306-2155

Richard Wieking, Clerk
U.S. District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Ian Keye
Court Operations Manager
U.S. District Court
450 Golden Gate Avenue
San Francisco, CA 94102

MEMORANDUM

TO: Rules Committee, United States District Court
Northern District of California

FROM: Local Rules Advisory Committee

DATE: November 1, 1994

RE: Draft of Proposed New Local Rules

The Local Rules Advisory Committee hereby transmits to the Rules Committee its proposal for new civil Local Rules. This memorandum is intended to introduce the draft by explaining the method by which it was prepared and the animating goals behind some of the proposals.

This Committee was appointed by Chief Judge Henderson pursuant to 28 U.S.C. § 2077(b) in March, 1994. Working closely with Judge Ware, the Committee has undertaken a comprehensive revision of the Court's Local Rules. In general, this revision was designed to accomplish several objectives:

(1) to remove provisions that were no longer applicable or appeared to conflict with pertinent provisions of the Federal Rules of Civil Procedure;

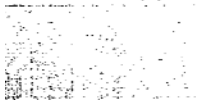
(2) to remove provisions that appeared unnecessary because the matters involved are now covered by the Federal Rules of Civil Procedure;

(3) to move into the Local Rules provisions currently in the Court's General Orders that seemed more appropriately included in the Local Rules;

(4) to arrange the provisions of the Local Rules so that they correspond to the Federal Rules of Civil Procedure;

(5) to integrate the provisions of General Order 34 into the Local Rules; and

(6) to consider possible changes in the rules on grounds of policy.



To accomplish these objectives, the Committee began with a rearrangement of the current local rules already done by Judge Ware that corresponded to the Federal Rules of Civil Procedure. Throughout the process, the Committee has worked closely with Judge Ware in fashioning the draft. Members of the Committee surveyed the current local rules to be sure that their provisions were properly re-designated to correspond to pertinent Federal Rules. In addition, the Court's General Orders and the standing orders of each Judge were reviewed to identify measures that might profitably be included in the Local Rules. The local rules of the other three districts in California were also reviewed to identify measures that might profitably be included in the Local Rules in this District.

Based on these various review processes, the Committee reached the conclusion that a number of matters presently covered in the local rules or General Orders should be in local rules but do not fit into civil Local Rules. Indeed, as to some of these matters other committees are drafting proposed rules. Accordingly, the attached draft contains a general set of civil Local Rules. As explained in proposed Local Rule 1-2(a), it contemplates adoption of additional local rules governing the following areas:

(1) Admiralty and Maritime Cases

(2) Alternative Dispute Resolution

(3) Bankruptcy Proceedings

(4) Criminal Proceedings

(5) Habeas Corpus Proceedings

Based on existing rules, the Committee is preparing proposals for the first and last of the above additional areas. Our intention is not to make any substantive change in the rules governing these areas. We understand that others are drafting rules for Bankruptcy and Criminal proceedings. A draft set of rules regarding Alternative Dispute Resolution incorporating provisions regarding arbitration from the Court's present local rules and from General Order 35 is under way but has not been completed for review by the Court.

Accordingly, the draft civil Local Rules follow the format of the Federal Rules of Civil Procedure. The final editing was delegated to a subcommittee, and there may be the occasion for the committee to suggest some additional modifications of language in some proposed rules. The draft includes cross-references to the current local rules and also occasional committee notes regarding the purpose of the provisions. It is likely that a reading of the entire document is the most effective way to appreciate its provisions, but we thought it would be worthwhile to point out certain features in the cover memorandum.

The remainder of this memorandum will highlight certain of the changes in light of the various objectives the drafting committee was pursuing. These might most easily be organized as uniformity, adjusting the local rules to the national rules and taking account of the CJRA experience, simplification and policy changes. The references to specific provisions will therefore be presented in that manner.

Uniformity

Some proposals reflect the committee's conclusion that uniformity is an important objective. Although specific standards are sometimes included, the committee was more concerned with having a uniform standard than with the specific content of the standard in question.

Local Rule 1-2 (Standing Orders): This rule establishes that the goal of the entire package of rules is to provide a comprehensive and uniform set of procedures so that individual orders will not be necessary with regard to matters covered by the local rules. The committee expected that matters relating to the conduct of the trial would still be tailored by individual judges.

Local Rule 7-2(a) (Motions): This rule provides that the notice period for motions be 35 days. The committee found that different judges had different notice requirements, but that several had directed 35 days' notice by standing orders, and the committee adopted that standard. The committee felt that the actual number of days was less important than that one uniform standard be employed by all judges.

Form A (Case Management Conference Statement and Proposed Order): Having surveyed the diverse requirements of different judges, the committee developed one form for such statements. The committee hopes not so much that this form be adopted unaltered as that it be used by all judges so that there would not be individual variations.

Adjusting to the national rules and CJRA experience

Several members of the committee have also served in the CJRA Advisory Group and had experience in the drafting of General Order 34. As the Court is aware, the December, 1993, amendments to Rules 16 and 26 altered provisions covering similar matters. Having reflected on the experience under General Order 34 and the new provisions of the national rules, the committee attempted to develop a coherent and effective case management system for civil cases in the district.

Local Rule 16 (case management): This rule incorporates the recent changes in Federal Rules 16 and 26 as well as building on the experience of General Order 34. Except for cases excluded under Local rule 16-1, all cases will involve a

tailored version of the initial disclosure requirements of Federal Rules 26(a)(1). Rule 16-2 sets out the basic case management schedule providing that most specified events occur during the first 120 days after commencement of the case. Although early discovery by consent is allowed, Local Rule 16-3 directs that non-consensual discovery occur only after the Court has considered the needs of the case in light of the disclosures made. parties who would suffer prejudice from waiting could obtain relief from the court to permit earlier initiation of formal discovery. Some features of General Order 34 that foreshadowed changes made in the national rules (e.g., early production of core documents) have been retained.

Largely invisible on the enclosed draft is another category of adjustments to take account of provisions of the Federal Rules. On occasion the committee eliminated provisions now in the local rules on the basis that the national rules adequately deal with the issue. For example, the draft does not include current rule 120-4 concerning calculation of time because it is inconsistent with Federal Rule 6(d). In this instance, the committee was aware that the existing rule is simple to use, but felt that it would be dubious to deviate from the Federal Rules on this point. Similarly, the committee is recommending considerable editing of current local rule 400, so that there is no repetition of the applicable Federal Rules or statutes, and the provisions regarding handling of appeals from decisions of Magistrate Judges have been trimmed on the theory that the Federal Rules provide substantial guidance. Other changes of this sort involved the local rules concerning the civil jury.

Simplification

In conjunction with reorganizing the rules to correspond to the arrangement in the Federal Rules, the committee tried to simplify the text of the current rules. Examples include:

Proposed Local Rules 3-4 and 3-5 on the form of papers filed would therefore cover all the materials appearing in current rules 120-1, 120-2, 200-1 and 200-2.

Proposed Local Rule 7-8 restates current local rule 220-9 so that it is easier to follow.

Policy Suggestions

The committee also included some changes that it felt would be wise as a matter of policy.

Local Rule 11 more closely restricts bar membership to members of the California bar; the previous local rule was less restrictive on this issue. It also requires lawyers admitted to practice before the Court to notify the Court of any change in their status in other courts that might bear on their status as members of the bar of this Court. In addition, Local Rule 11-11 spells out requirements for

student practice before the Court.

Local Rule 37 sets out a new means of resolving discovery disputes involving an informal chambers conference or an expedited motion. Some judges have experimented with such alternative devices, and the committee is recommending that the Court make them generally available to streamline and reduce the cost of discovery.

The committee has also recommended that chambers copies may be lodged at any branch of the clerk's office (Local Rule 3-7), as well as a mechanism for receipt of sealed documents (Local Rule 79-6). In addition, it has amplified the related case procedures to take advantage of economies that might result from coordination of cases (Local Rule 3-13).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES COURTHOUSE
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102
(415) 522-4100

CHAMBERS OF
PHYLLIS J. HAMILTON
CHIEF JUDGE

April 3, 2018

Alan B. Morrison
Lerner Family Associate Dean for Public
Interest & Public Service
George Washington University
School of Law
2000 H Street, NW
Washington, DC 20052

Dear Mr. Morrison

I write in response to your letter of February 6, 2018, and accompanying petition to amend the Northern District of California's Civil Local Rule 11-1(b). As per our Civil Local Rule 83-1, your petition and supporting materials have been fully vetted first by the court's Local Rules Committee and then by the entire court. We have voted to deny your petition.

Thank you for your interest in our local rules.

Sincerely,

Phyllis Hamilton
Chief Judge

cc: Hon. Richard Seeborg,
Chair, Local Rules Committee

Susan Y. Soong, Clerk of Court

May 23, 2018

BEFORE THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT

PETITION TO MODIFY OR ABROGATE LOCAL RULE

Pursuant to 28 U.S.C. § 2071(b), the District Courts of the United States are authorized to promulgate Local Rules. Those Rules remain in effect unless "modified or abrogated by the judicial council of the relevant circuit." 28 U.S.C. § 2071(c)(1). On February 6, 2018, petitioner Public Citizen Litigation Group, joined by 12 other organizations and individuals, petitioned the United States District Court for the Northern District of California to amend its Local Rule 11-1(b), which limits admission to that Court to attorneys who are active members of the State Bar of California. The Court denied the Petition, without explanation. Petitioners now ask the Judicial Council of the Ninth Circuit to review that denial.

The Petition, a copy of which is attached, did not contend that the Local Rule was unlawful. Rather, it asked that the Rule be amended to delete the requirement that applicants must be active members of the Bar of the State of California for three basic reasons:

(1) The requirement for California Bar admission does not bear any reasonable relationship to the actual practice in that Court because the procedures followed are established by federal rules and because the legal issues in the majority of the cases in that Court arise under federal, not California law.

(2) Because the California Bar does not allow attorneys admitted in other jurisdictions to be admitted on motion, every applicant must take the California Bar exam. That requirement imposes unjustified burdens of time and money attorneys whose primary reason to obtain admission to that Bar is to be admitted to practice in the Northern District. In addition, once admitted, an attorney must continue to be an active dues-

paying member of the California Bar to remain a member of the Bar of the Northern District, even when the attorney does not regularly practice in California. These burdens are wholly out of proportion to any possible benefit that might be realized for clients and the District Court from imposing such a requirement.

(3) The requirements for pro hac vice admission — in particular the payment of $310 for each attorney in each case — are burdensome, making pro hac vice admission an inadequate alternative to full admission.

An Addendum to the Petition described the eleven non-profit organizations and two attorneys that joined the Petition and identified their interests in the proposed change in Rule 11-1(b). Except for the American Civil Liberties Union, all of the original petitioners are petitioners before the Judicial Council.

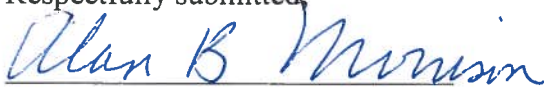
The Petition noted that, pursuant to Local Rule 83-2, all amendments to Local Rules require public notice and an opportunity to submit comments, and it requested that such a public rulemaking process be commenced. Because all of the District Courts in the Ninth Circuit have similar requirements, copies of the Petition were sent to the Clerks of the other District Courts, as set forth in the attached cover letter to the Chief Judge of the Northern District.

Instead of commencing a public rulemaking proceeding, the Local Rules Committee of the Court and then the entire Court voted to deny the Petition. The attached letter dated April 3, 2018 from Chief Judge Phyllis Hamilton gave no reasons why public comments were not sought, and offered no reason for denying the Petition.

Because the Court gave no reason why the Petition was denied, petitioners have nothing to add to what is in the Petition. Petitioners are not aware of any procedural requirements applicable to a review of a Local Rule by the Circuit Council, but suggest that the public

comment procedure in 28 U.S.C. § 2071(b), applicable to amendments to other rules, would be appropriate in connection with the Council's review of Local Rule 11-1(b) of the Northern District. Petitioners request that, after receiving comments from interested persons, the Council direct the District Court for the Northern District of California to amend Local Rule 11-1(b) to provide as specified on page 5 of the Petition.

Respectfully submitted,



Alan B. Morrison
George Washington University Law School
2000 H Street NW
Washington D.C. 20052
202 994 7120
abmorrison@law.gwu.edu

Attorney for the Petitioners

May 23, 2018

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS FOR THE NINTH CIRCUIT

JAMES R. BROWNING UNITED STATES COURTHOUSE
95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

SUSAN Y. SOONG
CIRCUIT EXECUTIVE

TEL: 415-355-8960

February 24, 2022

Mr. Alan B. Morrison
The George Washington University Law School
2000 H Street, NW
Washington, DC 20052

Re: Petition to Modify or Abrogate Local Rule

Dear Mr. Morrison

Thank you for your submission for review to the Judicial Council for the Ninth Circuit, concerning the Northern District of California's Civil Local Rule 11-1(b). You requested the Judicial Council modify or abrogate the rule. The Judicial Council considered your request at its February 2022 meeting. On February 24, 2022, the Judicial Council denied the request from Alan B. Morrison to direct the District Court for the Northern District of California to amend the Local Rules related to state bar admission requirement.

Sincerely,

/s/ Lucy H. Carrillo
Assistant Circuit Executive
Court Operations, Policy, and Legal Affairs Unit

EXHIBIT 2

Thomas Alvord
LawHQ, P.C.
299 S. Main St. #1300
Salt Lake City, UT 84111
385-285-1090 Ext 30002
thomasalvord@lawhq.com

July 5, 2022

United States District Court
Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Re: Proposed Amendments to the Local Rule Regarding Admission of Out-Of-State Attorneys

To Whom It May Concern,

We would like to propose the following amendments to Local Civil Rule 83.1(A) and (C):

(A) **Eligibility:** Any person who is an Active Member of the bar of the highest court of any state, territory, the District of Columbia, or any federal court ~~the Virginia State Bar~~ in good standing is eligible to practice before this Court upon admission.

* * *

(C) **Procedure for Admission:** Every person desiring admission to practice in this Court shall file with the Clerk written application therefor accompanied by an endorsement by two (2) qualified members of the bar of the highest court of any state, territory, the District of Columbia, or any federal court ~~the bar of this Court~~ stating that the applicant is of good moral character and professional reputation. The form for such application may be obtained from the Clerk's Office.

As a part of the application, the applicant shall certify that applicant has within ninety (90) days prior to submission of the application read or reread (a) the Federal Rules of Civil Procedure, (b) the Federal Rules of Evidence, and (c) the Local Rules of the United States District Court for the Eastern District of Virginia.

The applicant shall thereafter be presented by a qualified practitioner of the bar of the highest court of any state, territory, the District of Columbia, or any federal court ~~the Court~~ who shall in open Court by oral motion, and upon giving assurance to the Court that the practitioner has examined the credentials of the applicant and is satisfied the applicant possesses the necessary qualifications, move the applicant's admission to practice.

The applicant shall in open Court take the oath required for admission, subscribe the roll of the Court, and pay to the Clerk the required fee. For such payment, the applicant shall be issued a certificate of qualification by the Clerk. For good cause shown, the Court may waive payment of the fee.

Federal government attorneys, whether they are Department of Justice attorneys, or assistant United States attorneys, or employed by any other federal agency, are not required to pay the admission fee if they are appearing on behalf of the United States.

The practice of law in federal courts is a nationwide practice in many circumstances. Cases are decided based upon federal, not state, law principles. Often cases are heard in jurisdictions removed from where the filing party resides. We believe this Court should implement this amendment for four reasons: (i) It best serves the people of this district by providing broader access to legal services, (ii) There is precedence for admitting out-of-state

attorneys, (iii) For decades the federal courts have been encouraged to remove barriers to admission, and (iv) It is the purview of this Court to set its admission rules.

First, we believe this Court should allow admission to out-of-state attorneys because it best serves those who reside within the jurisdiction of this Court. Over 34 years ago the United States Supreme Court noted "[t]here is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries." *Frazier v. Heebe*, 482 U.S. 641, 648 n.7 (1987). This is even more true today!

At LawHQ, we have found there is indeed a demand for specialized legal services regardless of state boundary. LawHQ has clients in 47 states who have asked us to help them with legal issues. Yet, LawHQ is limited in how we can serve clients because our attorneys are not admitted in every state. We practice federal law, in federal courts, before federal judges, but we can only be admitted in certain U.S. District Courts and not others, even though we are practicing the same federal law in the federal court system. While there are *pro hac vice* admissions, it has additional financial and administrative costs and is "not on the same terms" as general admission.[1] The residents in this district should be allowed to select an attorney with the "specialized federal law" experience of their choosing. In many cases, denying parties the attorney of their choosing who specialize in a particular area will also deny that person representation. For instance, most FDCPA cases go to default judgment because the defendant

[1] In striking down a provision for federal bar admission that required attorneys to maintain a local residence in the State, the United State Supreme Court commented that the *pro hac* vice "alternative does not allow the nonresident attorney to practice on the same terms as a resident member of the bar. An attorney not licensed by a district court must repeatedly file motions for each appearance on a *pro hac vice* basis…. [T]he availability of appearance pro hac vice is not a reasonable alternative for an out-of-state attorney who seeks general admission." *Frazier v. Heebe*, 482 U.S. 641, 650-51 (1987).

has inadequate access to representation. Allowing broader admission of out-of-state attorneys will provide broader access to legal services to residents in this district.

Restricting admission to only in-state attorneys puts the people and businesses within this district at a disadvantage compared to those residing in other districts that do allow admission to out-of-state attorneys. Given the "more mobile federal bar" and "increased demand for specialized legal services regardless of state boundaries" that the Supreme Court noted, we believe this proposed amendment best serves the individuals and businesses in this district.

Second, many districts admit out-of-state attorneys and these admissions have not caused any issues in the administration of justice. Currently 34 of the 94 federal district courts admit attorneys licensed out-of-state, making this the local rule in over a third of the U.S. District Courts.[2] All United States courts of appeals admit attorneys if they are admitted to practice before "the highest court of a state." *Fed. R. App. P. 46(a)(1)*. And the United States Supreme Court admits attorneys who have been "admitted to practice in the highest court of a State." *United States Supreme Court Rule 5.1.* If the United States Supreme Court, all United States courts of appeals, and 34 district courts only require admission to "the highest court of a state," there is no good reason to limit admission in this district to in-state attorneys.

[2] The following U.S. District Courts admit attorneys licensed out-of-state: Arkansas Eastern, Arkansas Western, Colorado, D.C., Connecticut, Illinois Central, Illinois Northern, Illinois Southern, Indiana Northern, Indiana Southern, Maryland, Michigan Eastern, Michigan Western, Missouri Eastern, Nebraska, New Mexico, New York Northern, New York Western, North Dakota, Ohio Northern, Oklahoma Eastern, Oklahoma Northern, Oklahoma Western, Pennsylvania Western, Tennessee Eastern, Tennessee Middle, Tennessee Western, Texas Eastern, Texas Northern, Texas Southern, Texas Western, Vermont, Wisconsin Eastern, Wisconsin Western

Third, for decades the federal courts have been encouraged to remove barriers to admission. In 1995 the American Bar Association House of Delegates passed the following resolution:[3]

> RESOLVED, That the American Bar Association supports efforts to lower barriers to practice before U.S. District Courts based on state bar membership by eliminating state bar membership requirements in cases of U.S. District Courts, through amendment of the Federal Rules of Civil and Criminal Procedure to prohibit such local rules.

For 30 years the National Association for the Advancement of Multijurisdiction Practice has sought to remove local rules of practice that limits those who may appear before federal courts.[4] Four years ago, Public Citizen Litigation Group submitted a petition asking the Northern District of California to remove the requirement that attorneys be admitted to the California bar.[5] This petition was signed by the American Civil Liberties Union, Association of Corporate Counsel, Cato Institute, Center for Constitutional Litigation, Competitive Enterprise Institute's Center for Class Action Fairness, Consumers for a Responsive Legal System, Earthjustice, Natural Resources Defense Council, Pacific Legal Foundation, Public Justice, and John Vail Law. There is a chorus of many other professors, commentators, and attorneys who have sought to modernize the federal court admission requirements by removing specific state bar requirements for admission to the federal courts.[6]

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[3] *Attorney Admission Practices in the U.S. Federal Courts*, The Federal Lawyer, (Sept 2016).

[4] See e.g. *Nat'l Ass'n for the Advancement of Multijurisdiction Practice v. Howell*, 851 F.3d 12, 16 (D.C. Cir. 2017).

[5] *Petition of Public Citizen Litigation Group*; see also *Press Release of Public Citizen*.

[6] See e.g. *The Case for a Federally Created National Bar by Rule or by Legislation*, 55 Temp. L. Q. 945, 960-964 (1982); *State Ethical Codes and Federal Practice: Emerging Conflicts and Suggestions for Reform*, 19 Fordham Urb. L.J. 969, 978 (1992); *Fred C. Zacharias, Federalizing Legal Ethics*, 73 Tex. L.Rev. 335, 379 (1994); *Reforming Lawyer Mobility—Protecting Turf or Serving Clients?* 30 Geo. J. Legal Ethics 125 (2017).

Fourth, it is the purview of this Court to set the admission rules of this Court. "In absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards." *Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367, 63 S. Ct. 573, 575, 87 L. Ed. 838 (1943). Each U.S. District Court has the power to regulate its admission criteria, independent of state laws or state bar licensing requirements:

> Although federal courts often reference state rules in their [admission] requirements… they need not do so…. [F]ederal courts have the right to control the membership of the federal bar…. The power to admit and regulate attorneys is not… the sole bailiwick of the states. Since both the federal courts and state bars have the ability to regulate attorneys, the question becomes which has the greater power to regulate admission to the federal bar…. When state licensing laws purport to prohibit lawyers from doing that which federal law expressly entitles them to do, the state law must give way.

In re Desilets, 291 F.3d 925, 929-30 (6th Cir. 2002) (internal citations omitted).

> Admission to practice law before a state's courts and admission to practice before the federal courts in that state are separate, independent privileges. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included…. In short, a federal court has the power to control admission to its bar and to discipline attorneys who appear before it…. As we have discussed, and as nearly a century of Supreme Court precedent makes clear, practice before federal courts is not governed by state court rules. Further, and more importantly, suspension from federal practice is not dictated by state rules.

In re Poole, 222 F.3d 618, 620-22 (9th Cir. 2000) (internal citations omitted); see also, *Spanos v. Skouras Theatres Co*., 364 F.2d 161 (2d Cir. 1966).

To conclude, we would ask this Court to implement the proposed amendment for the benefit of this district's residents. This change allows the people and businesses in this district to receive the "specialized federal law" expertise they need and want "regardless of state boundaries." It is a small change with a big impact on both access to justice and access to legal representation. Many U.S. District Courts, and all appellate courts, already admit out-of-state

attorneys and have done so without issue. Your thoughtful consideration and response to this proposed amendment is much appreciated.

Thank you,

Thomas Alvord
Managing Attorney
LawHQ, P.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
600 GRANBY STREET
NORFOLK, VIRGINIA 23510

CHAMBERS OF
MARK S. DAVIS
CHIEF JUDGE

TELEPHONE: (757) 222-7014
FACSIMILE: (757) 222-7179

October 24, 2022

Thomas Alvord, Esq.
LawHQ, P.C.
299 S. Main Street #1300
Salt Lake City, UT 84111

Re: Proposed Amendments to the Local Rule Regarding Admission of Out-Of-State Attorneys

Dear Mr. Alvord:

Thank you for your letter of July 5, 2022, regarding proposed changes to the Court's Local Civil Rule 83.1 to allow non-Virginia licensed attorneys admission to the Bar of the Eastern District of Virginia. The judges of the Court have considered the matter and have decided to retain the existing rule.

The Court appreciates your input and interest in the Court's local rules. With best regards, I am

Sincerely yours,

Mark S. Davis
Chief Judge, United States District Court for the Eastern District of Virginia

MSD:rsk

EXHIBIT 3
SAMPLE OF EXISTING BAR ADMISSION REQUIREMENTS

Each federal district sets its own bar admission requirements. Listed below are a sample of some of these requirements in various categories beyond the local state bar admission requirement. They illustrate the costs and burdens imposed by restrictive bar admission requirements that would be mitigated by a unified rule.

I. Limitations on Reciprocity

Most districts do not have reciprocal admission, and some that do are limited. For example, the District of Kansas and the Western District of Missouri allow only automatic reciprocal admission to their bars[1] The reciprocity between Southern and Eastern Districts of New York extends only to attorneys admitted in the District of Vermont or the District of Connecticut, and to the state bar in those states..[2]

Reciprocity may also be limited to attorneys who are members of the bar of the state where they maintain their principal law office, as in the District of Columbia,[3] or to members of the bars of certain circuit courts, as in the District of Vermont.[4]

II. Admission Fees

All federal districts charge admission fees. Federal law requires the courts to collect fees as prescribed by the Judicial Conference of the United States (JCUS).[5] JCUS has set the fee for the admission of an attorney to a district court bar at $188, although courts may charge more.[6] The Western District of North Carolina charges a $288, and the Eastern District of Michigan

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[1] *See, e.g.*, *Rules of Practice*, United States District Court for the District of Kansas (Nov. 25, 2021), https://ksd.uscourts.gov/sites/ksd/files/11-25-21-KSD-Local-Rules-Master-Copy.pdf.
[2] *See Local Rules of United States District Courts for the Southern and Eastern Districts of New York*, United States District Court for the Southern District of New York (Oct. 15, 2021), https://www.nysd.uscourts.gov/sites/default/files/local_rules/2021-10-15%20Joint%20Local%20Rules.pdf.
[3] *See Rules of the United States District Court for the District of Columbia*, United States District Court for the District of Columbia (May 2022), https://www.dcd.uscourts.gov/sites/dcd/files/local_rules/Local%20Rules%20May_2022_0.pdf.
[4] *See Local Rules of Procedure*, United States District Court for the District of Vermont (Mar. 1, 2017), https://www.vtd.uscourts.gov/sites/vtd/files/LocalRules.pdf.
[5] 28 U.S.C. § 1914.
[6] *See District Court Miscellaneous Fee Schedule*, United States Courts (Dec. 1, 2020), https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule.

charges $307.[7] The Northern District of California charges $317, and the Central District of California increases the fee to $331 for attorneys admitted for more than three years.[8]

III. Renewal Requirements and Fees

Districts often require attorneys to pay regular renewal fees. For example in the Northern District of Alabama, every 5 years attorneys must submit a certification of continued good standing, along with a renewal fee of $50.[9] In the Southern District of Illinois, attorneys must pay a $100 renewal fee every two years, and in the Northern District of New York the fee is $50 every two years.[10] In the District of Kansas and the Northern District of Iowa, attorneys must renew their registration each year and pay a $25 fee.[11]

Even more burdensome, the Southern District of Texas requires attorneys to re-apply every five years and pay the full $188 admission fee each time.[12] In the Eastern District of Louisiana a renewal fee of $188 is required every three years, along with a comprehensive re-registration statement.[13]

IV. Pro Hac Vice Admission Fees

For those districts permitting pro hac vice admissions, many impose separate fees. There is no applicable federal law for these fees, and so districts have great discretion in setting fees.

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[7] *See Court Fees*, United States District Court for the Western District of North Carolina (Dec. 1, 2020), https://www.ncwd.uscourts.gov/court-fees; *Fee Schedule*, United States District Court for the Eastern District of Michigan (2022), https://www.mied.uscourts.gov/index.cfm?pageFunction=coFeeSchedule.

[8] *See Court Fee Schedule Summary*, United States District Court for the Northern District of California (Oct. 1, 2022), https://www.cand.uscourts.gov/about/clerks-office/court-fees/; *Schedule of Fees*, United States District Court for the Central District of California (2022), https://www.cacd.uscourts.gov/sites/default/files/forms/G-072/G-72.pdf.

[9] *See Schedule of Fees*, United States District Court for the Northern District of Alabama (Dec. 1, 2020), https://www.alnd.uscourts.gov/sites/alnd/files/NDAL%20Fee%20Schedule%20Effective%2012-01-2020.pdf.

[10] *See Fee Schedule*, United States District Court for the Southern District of Illinois (2022), https://www.ilsd.uscourts.gov/AttyFeeSchedule.aspx; *Court Fees & Rates*, United States District Court for the Northern District of New York (2022), https://www.nynd.uscourts.gov/court-fees-rates.

[11] *See Rules of Practice*, United States District Court for the District of Kansas (Nov. 25, 2021), https://ksd.uscourts.gov/sites/ksd/files/11-25-21-KSD-Local-Rules-Master-Copy.pdf; *Schedule of Fees*, United States District Court for the Northern District of Iowa (Dec. 1, 2020), https://www.iand.uscourts.gov/sites/iand/files/Fee%20Schedule_revised%20Oct2019.pdf.

[12] *See Local Rules of the United States District Court for the Southern District of Texas*, United States District Court for the Southern District of Texas (May 1, 2000), https://www.txs.uscourts.gov/sites/txs/files/LR%20May%202020%20Reprint.pdf; https://www.laed.uscourts.gov/sites/default/files/local_rules/2022%20CIVIL%20RULES%20LAED%20w%20Amendments%203.1.22.pdf.

[13] *Fee Schedule*, United States District Court for the Eastern District of Louisiana (2022), https://www.laed.uscourts.gov/CASES/fee.htm; *Local Civil Rules of the United States District Court for the Eastern District of Louisiana*, United States District Court for the Eastern District of Louisiana (Mar. 1, 2022),

In the District of Montana, the pro hac vice admission fee is $262, and in the Western District of North Carolina the fee is $288.[14] In the District of Hawaii, the fee is $300.[15] California courts impose some of the most burdensome pro hac vice admission fees, with the Northern District of California charging $317, and the Central District charging $500 per case.[16]

V. Limitations on Pro Hac Vice Admissions

Many districts impose significant restrictions on pro hac vice admissions, such as limiting the number of times an applicant can be admitted pro hac vice or requiring supervision by local counsel.

A. Caps on Pro Hac Vice Admissions

Some federal districts limit the number of appearances a pro hac vice attorney can make in a given time period. For example, in the District of Maryland, "no attorney may be admitted pro hac vice in more than three (3) unrelated cases in any twelve (12) month period, nor may any attorney be admitted pro hac vice in more than three (3) active unrelated cases at any one time."[17]

A similar limitation is imposed in the Southern District of Florida and the Eastern District of North Carolina.[18] In the Northern and Southern Districts of Mississippi the cap is five unrelated pro hac vice admissions within one year.[19]

B. Local Counsel Requirements

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[14] *See Fee Schedule*, United States District Court for the District of Montana (Dec. 1, 2020), https://www.mtd.uscourts.gov/fee-schedule; *Court Fees*, United States District Court for the Western District of North Carolina (Dec. 1, 2020), https://www.ncwd.uscourts.gov/court-fees.

[15] *See Fee Schedule*, United States District Court for the District of Hawaii (Dec. 1, 2020), https://www.hid.uscourts.gov/court-resources/schedule-of-fees.

[16] *See Court Fee Schedule Summary*, United States District Court for the Northern District of California (Oct. 1, 2022), https://www.cand.uscourts.gov/about/clerks-office/court-fees/; *Schedule of Fees*, United States District Court for the Central District of California (2022), https://www.cacd.uscourts.gov/sites/default/files/forms/G-072/G-72.pdf.

[17] *Local Rules*, United States District Court for the District of Maryland (July 1, 2021), https://www.mdd.uscourts.gov/local-rules.

[18] *See Local Rules*, United States District Court for the Southern District of Florida (Dec. 1, 2021), https://www.flsd.uscourts.gov/sites/flsd/files/Local_Rules_Effective_120121_FINAL.pdf; *Local Rules*, United States District Court for the Eastern District of North Carolina (Dec. 2019), https://www.nced.uscourts.gov/pdfs/LocalCivilRulesDecember2019.pdf.

[19] *See Local Uniform Civil Rules*, United States District Court for the Northern District of Mississippi and the Southern District of Mississippi (Dec. 1, 2021), https://www.msnd.uscourts.gov/sites/msnd/files/forms/2021-%20MASTER%20COPY%20-%20CIVIL%20FINAL.pdf.

Many districts strictly limit what pro hac vice attorneys can do, requiring the pro hac vice attorney to designate an attorney already admitted to the district bar–local counsel–to sign all papers and filings submitted to the court and/or to "participate meaningfully" in the case.[20]

For example, in the Northern District of Alabama an attorney can only be admitted pro hac vice if an attorney already admitted to the district bar is also representing the same client in that case, and the local counsel must review and sign all pleadings and other papers submitted to the court by the pro hac vice attorney.[21] In the District of Delaware, local counsel must file all papers and attend all court proceedings, as is the case in many districts.[22]

VI. Miscellaneous Restrictions

In the District of Massachusetts, the United States Attorney for the district has an opportunity to review an attorney's application to the district bar and recommend rejection of the application.[23]

In the Northern District of Indiana, the court may require any attorney residing outside of the district, even one already admitted to the district court bar, to retain local counsel in a case.[24]

In some districts, like the Eastern District of Oklahoma, the eligibility criteria for admission pro hac vice in a case are not clearly defined but rather left entirely to the discretion of the court in each case.[25]

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[20] *See, e.g.*, *Rules of Practice*, United States District Court for the District of Kansas (Nov. 25, 2021), https://ksd.uscourts.gov/sites/ksd/files/11-25-21-KSD-Local-Rules-Master-Copy.pdf.

[21] *See Local Rules*, United States District Court for the Northern District of Alabama (Dec. 4, 2019), https://www.alnd.uscourts.gov/sites/alnd/files/ALND%20Local%20Rules%20Revised%2012-04-2019.pdf.

[22] *See Local Rules of Civil Practice and Procedure for the United States District Court for the District of Delaware*, United States District Court for the District of Delaware (Aug. 1, 2016), https://www.ded.uscourts.gov/sites/ded/files/local-rules/District%20of%20Delaware%20LOCAL%20RULES%202016.pdf; *see also Local Uniform Civil Rules*, United States District Court for the Northern District of Mississippi and the Southern District of Mississippi (Dec. 1, 2021), https://www.msnd.uscourts.gov/sites/msnd/files/forms/2021-%20MASTER%20COPY%20-%20CIVIL%20FINAL.pdf.

[23] *See Local Rules of the United States District Court for the District of Massachusetts*, United States District Court for the District of Massachusetts (June 17, 2022), https://www.mad.uscourts.gov/general/pdf/local-rules/Combined%20Local%20Rules.pdf.

[24] *See Local Rules*, United States District Court for the Northern District of Indiana (Feb. 25, 2022), https://www.innd.uscourts.gov/sites/innd/files/CurrentLocalRules.pdf.

[25] *See Local Civil Rules*, United States District Court for the Eastern District of Oklahoma (July 5, 2016), https://www.oked.uscourts.gov/sites/oked/files/Local_Civil_Rules.pdf.