

Best Practices for Local Counsel

By Brandy L. Stice and Stephen W. King

Increasingly, acting as local counsel is becoming more and more prevalent. Conscientious lawyers can and should take advantage of this growing trend as it can both assist your practice (e.g., by learning from quality lawyers throughout the country) and your bottom line.

Logistics first

The most important thing to keep in mind when asked to act as local counsel is to be willing and prepared to provide as much (or as little) as national counsel and client want and need. Thus, your first order of business is to discuss, understand, and confirm the scope of your engagement. The participation of local counsel necessarily increases costs to the client, so maybe you will play a small, more administrative role such as handling the filings, tracking the docket, and providing email updates. However, you may play a more substantive role such as drafting pleadings, conducting certain discovery, attending hearings and conferences, and even being an active part of the trial team. Whatever your role, be certain you confirm it, including whether you will have any client contact and to whom you should address your correspondence and provide updates. Typically, you will deal with national counsel as they have undoubtedly worked hard for the client, and

thus, (and this should go without saying) *never* use the role of local counsel to swoop in and steal business.

Another important issue to work out immediately is how much you can charge for your services and, assuming you are billing an hourly rate, whom you are to bill for your time—national counsel or the client. Be certain to memorialize both your scope of work and billing arrangements in a written engagement letter after all conflicts have cleared. This is important not only for logistical reasons, but for ethical reasons as well; no matter how small the scope of your work may be and no matter who you are actually billing for your time, your duties of representation are ultimately to the client and your name will very likely be on the pleadings and other documents. Confirm that the client is aware of and has approved your engagement. An engagement letter directly to the client is preferable or, alternatively, should be given to both the client and national counsel if you are billing national counsel. When executing an engagement letter, anticipate change and be willing to accept more or less work if requested to do so.

Provide and assist with relevant local rules/information

You are being retained as local counsel, so be the local expert by providing experi-

enced local services. Your first task on the case will likely be assisting with any *pro hac vice* or other admissions required for national counsel. Familiarize yourself with the applicable rules and procedures for the court in which the matter is pending as out-of-state attorney admissions criteria can differ from court to court. For example, *pro hac vice* admissions for out-of-state lawyers seeking to appear before a Michigan court, administrative tribunal or agency, or arbitration proceeding, must comply with MCR 8.126, which provides as follows:

(A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For

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purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.

(1) Procedure.

(a) Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court, administrative tribunal or agency, or arbitrator an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state lawyer is licensed and eligible to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify

- (i) the jurisdictions in which the attorney is or has been licensed or has sought licensure;
- (ii) the jurisdiction where the attorney is presently eligible to practice;
- (iii) that the attorney is not disbarred, or suspended in any jurisdiction, and is not the subject of any pending disciplinary action, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and
- (iv) that he or she is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses of both attorneys.

(b) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, the out-of-state attorney must pay a fee equal to the discipline and client-protection portions of a bar member's annual dues. The fee must be paid electronically to the State Bar of Michigan, in conjunction with submission of an electronic copy of the motion, the certificate of good standing and the affidavit to the State Bar of Michigan, pursuant to procedures established by the State Bar of Michigan. Upon receipt of the fee remitted electronically, confirmation of payment will issue electronically to the out-of-state attorney through the State Bar of Michigan's automated process.

Within seven days after receipt of the copy of the motion and fee, the State Bar of Michigan must notify the court, administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. The notification will be issued electronically, pursuant to the procedures established by the State Bar of Michigan. No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the State Bar of Michigan.

The State Bar of Michigan shall retain the discipline portion of the fee for administration of the request for temporary admission and disciplinary oversight and allocate the client-protection portion to the Client Protection Fund. If a request for investigation is filed with the grievance administrator against an attorney while temporarily admitted to practice in Michigan, the entire amount of the administration fee paid by that attorney for the case in which the allegations of misconduct arose would be transferred to the disciplinary system.

(c) Order. Following notification by the State Bar of Michigan, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases

within the past 365 days, the court, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, The Michigan attorney shall submit an electronic copy of the order or writing to the State Bar of Michigan within seven days.

(d) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

If the matter is pending in the U.S. District Court for the Eastern District of Michigan, under ED Mich LR 83.20(c)(1) "*pro hac vice* admission is not permitted." Instead, an attorney admitted to practice in another state or federal bar who is in good standing may apply for full admission pursuant to the specific procedures set forth in ED Mich LR 83.20 which provides, in pertinent part:

(d) Procedure for Admission.

(1) An applicant for admission to the bar of this court must pay the fee established by the Court and complete the application provided by the clerk. The following information must be included in the application:

- (A) applicant's name, firm/agency name (if applicable), office address, email address, office telephone and fax numbers;
- (B) the date of admission for each jurisdiction where the applicant has been admitted to practice and appropriate I.D. number;
- (C) whether the applicant has ever been held in contempt, or the subject of an order of discipline as defined in LR 83.22(a)(1). If so, the applicant must state the facts and the final disposition of each such instance;
- (D) whether the applicant is not in compliance with an order of a court directed to the applicant as a party, or been convicted of a crime. If so, the applicant must state the facts and the final disposition of each instance; and
- (E) any other name under which the applicant has received legal education or has

practiced or been licensed and the periods during which the names were used.

(2) An applicant for admission to the bar of this court must submit an original certificate of good standing issued within the last 30 days from a court of record identified in (c)(1).

(3) A sponsor is not required for an applicant under (c)(1), unless directed by the chief judge. A sponsor is required for an applicant under (c)(2).

(4) If the Court grants the application, the applicant must take the oath of office.

Likewise, the U.S. District Court for the Western District of Michigan provides specific instructions for attorney admissions pursuant to WD Mich LGenR 2.1, and WD Mich LGenR 2.2 also provides that it “disfavors *pro hac vice* admission and prefers that all lawyers appearing before it become full members of the bar of the court. *Pro hac vice* admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances.” It is a good idea to maintain a bank of sample or exemplar documents you can quickly update or share with national counsel.

As local counsel, you will be expected to provide national counsel and the client with information pertaining to issues such as venue, jury-pool demographics, judge disposition, specific courtroom procedures, and local court rules. One of your most important roles is ensuring you provide up-to-date local rules, especially with regard to electronic filing and judge-specific requirements. Make sure you do your research when necessary to provide accurate and insightful information. This information should be provided as soon as possible, even if not requested.

As local counsel, you can often be a valuable resource for information on local real estate markets, business climates and trends, or other local social or economic factors that could affect the case. Spend time thinking about local information that you may have or can procure that could be beneficial to working the case. Keep in mind that even if you may not play a big role this time, if you work hard and make an impression as the local expert, you will likely earn repeat and perhaps new business.

Work hard, be diligent, and be a good host

An easy rule of thumb for succeeding as local counsel is to treat the matter as you would treat one of your own. Don’t assume that national counsel will make the first move at every stage of the case. National counsel and in-house counsel are typically managing several cases in multiple jurisdictions. Accordingly, label each correspondence with the case name and any other quick, relevant information to make it easily identifiable and readily accessible. Be aware of all deadlines and provide appropriate updates and reminders. If your role includes drafting pleadings, do it well before the deadline. Again, national counsel and the client are likely managing several cases in different jurisdictions, so doing things early provides them time to read, edit, and approve, which is certain to be noticed and appreciated.

Another way to assist national counsel and the client is by being a good host. Provide recommendations for hotels and restaurants and arrange for work or meeting space (typically, your own office) while in town. These small gestures go a long way in building solid relationships with out-of-town colleagues.

Ethical and liability considerations

No matter how small your role may be, keep in mind that from the court’s perspective, local counsel is as much the attorney of record as any out-of-state attorney on the pleadings. In other words, there are no distinctions between local counsel and national or primary counsel. Your duties to the court and the client are no less than if you were the only attorney on the case and you will likewise be held accountable as such. In short, whether your role is not much more than that of a pleadings filer or whether you are drafting pleadings and arguing motions, you are accountable under the Model Rules of Professional Conduct.

Additionally, you are just as accountable under all applicable court rules, especially local rules, regarding your signature on pleadings. Do not expose yourself (and

others) to the risk of sanctions because you simply assumed compliance, especially when pleadings are drafted by national counsel. As a matter of course, always read and review *everything* prior to filing and suggest edits where necessary. Accordingly, do not underestimate your role as local counsel—it should hold the same weight and importance as any other representation made to the court on any matter on your docket.

Conclusion

While being mindful of the scope of your engagement, be proactive as if it were your own case and do not wait for national counsel to ask. Provide local procedural rules and judge-specific information right away. Calendar all dates and meet deadlines early. Be sure to proof all documents for compliance prior to filing and be mindful of the applicable court rules related to representations made to the court. Also remember that no matter how small your role may be, you owe the same duty of competence and diligence to the client as national counsel and you will be held accountable.

Acting as local counsel not only adds value to your practice, but it provides great networking opportunities. Providing timely and thorough service and updates to national counsel and/or the client will certainly increase the likelihood of repeat business and, hopefully, referrals for new business. ■

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