EXHIBIT A

MEMORANDUM

TO: Members of the Representative Assembly

FROM: Victoria Kremski, Counsel to the Unauthorized Practice of Law Committee

RE: Proposed Pro Hac Vice Rule (proposed)

DATE: February 25, 2005

On November 14, 2003 the SBM Representative Assembly recommended that the Supreme Court adopt proposed Michigan Rule of Professional Conduct 5.5. Proposed MRPC 5.5 sets forth the conditions under which out-of-state attorneys may temporarily provide legal services in Michigan, without being admitted as a member of the Bar. [1] (For purposes of this memo, "out-of-state" attorneys refers only to attorneys licensed to practice in another state or territory of the U.S. but not in Michigan.)

The proposed rule incorporates the current method for obtaining temporary permission found in Rule 15 (2) of the Rules Concerning the State Bar of Michigan [2]

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[1] Proposed Michigan Rule of Professional Conduct 5.5 would govern out-of-state lawyers providing legal services in Michigan on a temporary basis in litigation, alternative dispute resolution and administrative law matters. In addition, the rule also indicates that out of state attorneys may provide legal services in Michigan on a temporary basis, not related to a pending or potential proceeding, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

[2] Section Two of Rule 15 of the Rules of the State Bar of Michigan states:

> "Any person who is duly 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, may be permitted to engage in the trial of a specific case in a court or before an administrative tribunal 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. Such temporary permission may be revoked by the court summarily at any time for misconduct."

(the current Michigan "pro hac vice" rule). Rule 15 (2) allows an out-of-state attorney to serve as co-counsel in a matter in a trial of a specific case in a court or before an administrative tribunal, upon motion of a licensed Michigan attorney who remains as co-counsel in the proceeding. Pro hac vice rules are also part of the attorney regulatory scheme of every state jurisdiction.

There are several deficiencies with the pro hac vice rule as it is currently administered in Michigan. First, the motion need only be filed with the local tribunal. The SBM is not aware of any court that keeps statistics regarding the number of pro hac vice applications received and approved. For this reason it is impossible to know how many out-of-state lawyers are appearing in Michigan courts at any given time, whether any applications have been denied, and, most importantly, whether any of the out-of-state attorneys are actually engaging in a "regular practice" in Michigan, contrary to the intent of the pro hac vice rule.

Second, there is no formal mechanism to regulate out-of-state attorneys appearing in Michigan tribunal, except through the local court's contempt power and ability to revoke the temporary appearance. (The SBM has proposed to the Supreme Court that the disciplinary rules be amended to grant the Attorney Grievance Commission and the Attorney Discipline Board jurisdiction over out-of-state attorneys.) Currently, out-of-state attorneys who engage in misconduct in one Michigan tribunal can file for temporary pro hac vice permission to appear in another Michigan tribunal as there is no "central clearinghouse" to keep tabs on pro hac vice applicants. However, State Bar staff has initiated the process of addressing other procedural and non-policy issues associated with multijurisdictional practice in Michigan on an administrative level.

Third, there are no standard or minimum requirements that the pro hac vice applicant must meet to receive permission. The matter is left entirely to the discretion of the Michigan tribunal, which is poorly equipped to confirm whether the lawyer is indeed in good standing in his or her state of admission or has any record of professional discipline in another state.

Responding to the many states experiencing the same issues with pro hac vice admission, the American Bar Association adopted a Model Rule on Pro Hac Vice Admission. The proposal before the Representative Assembly is based upon the ABA Model Rule with suggested amendments specific to Michigan and consistent with Michigan practice.

The Rule proposes that the SBM serve as a "clearinghouse" to assist the local tribunals with pro hac vice applications. The SBM is best situated to keep records of pro hac vice applications statewide and can thus more readily determine whether an out-of-state lawyer or firm is using the pro hac vice rule to engage in a regular and continuous practice in Michigan contrary to the intent of the rule. In addition, SBM

staff has access to national resources and colleagues in other states, allowing for a rapid determination of pro hac vice applicants' standing and history in their state(s) of admission. The SBM would then supply information to the parties and applicable local Michigan tribunal to assist in the determination of the application.

The proposed rule requires that the application be filed with the local Michigan tribunal along with the usual motion fee, and that a copy of the application be provided to the SBM, along with a new administrative fee to the SBM. The rule also provides a definition of what constitutes a "regular practice" in Michigan.

Although it is not clear in the ABA Model Rule, commentary indicates that the Rule requires a pro hac vice applicant to affiliate with local counsel. The requirement of local counsel affiliation is a policy question whose merits should be seriously discussed and debated. If, as stated in the commentary to the ABA Model Rule, the move towards multijurisdictional practice is about giving clients more choice and flexibility in choosing counsel, how does requiring the client to retain and pay two sets of counsel serve this goal? This requirement has therefore been labeled by critics as nothing more than an "economic turf protection" measure. Some supporters believe that local counsel affiliation protects the public by ensuring that the client will have local counsel, familiar with local rules and statutes, to guide the pro hac vice counsel. However, the reality is that local counsel often do not take an active role in the case and can find themselves facing ethical dilemmas as they are required to ensure competent representation of the client in the event that pro hac vice counsel abandons the case, provides substandard representation or becomes impossible to work with.

State Bar staff has initiated the process of addressing other procedural and non-policy issues associated with multijurisdictional practice in Michigan on an administrative level. State Bar staff has communicated with Supreme Court staff on proposed amendments to the Professional Disciplinary Rules, the Rules Concerning the State Bar of Michigan and the Board of Law Examiners Rules.

Any recommendation that the Representative Assembly makes regarding pro hac vice practice should also be contingent upon granting the Attorney Grievance Commission and the Attorney Discipline Board jurisdiction over out-of-state attorneys, which is not currently the case.

As of this date, fifteen states have adopted some form of "multijurisdictional practice." Several states have entered into regional multi-state compacts whereby admission to one state automatically grants admission to the others. (Idaho, Oregon & Washington and New Hampshire, Vermont and Maine.) It is anticipated that the majority of states will eventually adopt some form of multijurisdictional practice.