



# THE IOWA STATE BAR ASSOCIATION

## Committee on Ethics and Practice Guidelines

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ISBA

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August 6, 2013

Mr. Dwight Dinkla  
Executive Director  
Iowa State Bar Association  
625 East Court Avenue  
Des Moines, IA 50309

RE: IA Ethics Opinion 13-02 *Pro Hac Vice* Counsel

Dear Mr. Dinkla,

The Committee has received several requests for clarification regarding the duties and responsibilities of Iowa lawyers who agree to sponsor the admission of non-Iowa lawyers *pro hac vice*. The situation arises when a client engages the services of a lawyer who is not admitted to practice law in Iowa to provide legal services in Iowa. Practicing law in Iowa without being authorized to do so by the Iowa Supreme Court is illegal and constitutes the unauthorized practice of law. Furthermore, an Iowa lawyer who assists another in the unauthorized practice of law violates Iowa R. Prof'l Conduct 32: 5.5 and is subject to professional discipline. The practice of law in Iowa is an activity that is highly regulated by the Iowa Supreme Court.

### Local Counsel and *Pro Hac Vice*

In order to be admitted *pro hac vice*, a non-Iowa lawyer must comply with Iowa Sup.Ct. R. 31.14. That Rule requires a certain level of participation

by an Iowa lawyer in the court or agency proceedings. The term “local counsel” has crept into our legal lexicon to describe the Iowa lawyer whose participation is required in order for the out-of-state lawyer to be admitted *pro hac vice*.

Unfortunately, some have come to view the role of the “local” counsel as subservient to the non-Iowa lawyer who will, in effect, be the “lead” counsel. While some states may view the role of the “local” lawyer to be nothing more than a mail drop, Iowa does not. In Iowa there is no such thing as “local counsel” within the meaning ascribed above. At best, the relationship is one of “co-counsel” with the Iowa lawyer having certain responsibilities to both the client and the court. With this in mind, we turn to an analysis of the Iowa rules regarding *pro hac vice* admission.

### Full vs Limited Bar Admission

Bar admission rules are found at Iowa Sup.Ct R. 31. The rule provides for two types of admission, full and limited. Full admission is acquired by qualifying for and passing the bar examination, (Iowa Sup. Ct. R. 31.3) or by being qualified for and being admitted upon motion, (Iowa Sup.Ct. R. 31.12). Limited admission is offered in two instances: to qualified non-Iowa lawyers, (Iowa Sup.Ct.R. 31.14), and to qualified law students, (Iowa Sup.Ct. R. 31.15). In exchange for not having to sit a bar examination or undertake the procedure to be admitted on motion, those individuals who accept limited admission privileges do so subject to the provisions of the rules regarding sponsorship and supervision. For example, under Rule 31.14 a non-Iowa lawyer must be sponsored by a fully admitted Iowa lawyer who must be willing to undertake certain supervisory duties, (Iowa Sup.Ct. R., 31.14(3)). Likewise, a law student must be qualified by the dean of the law school and operate under the supervision of a fully admitted member of the bar, (Iowa Sup.Ct. R. 31.15).

### Limitation on *Pro Hac Vice* Lawyers

The rights of *pro hac vice* lawyers are further limited by the requirements that:

- The Iowa lawyer must “actively” participate in the matter as counsel of record or co-counsel with the non-Iowa lawyer, (Iowa Sup. Ct. R. 31.14(3)(b) and Iowa R. of Prof'l Conduct 32:5.5(c)(1), hereinafter referred to as the “Active Participation Rule”) and
- “...the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency...” (Iowa Sup.Ct. Rule 31.14(3), hereinafter referred to as the “Responsibility for Conduct Rule.”)

In essence, the Active Participation and the Responsibility for Conduct rules operate as substitutes for the requirement of admission by examination or upon motion to ensure the court and the client that legal services will be rendered consistent with the standard of care associated with a fully admitted Iowa lawyer.

#### Responsibility for Conduct Rule

The Responsibility for Conduct rule places a heavy burden on Iowa lawyers who agree to sponsor the admission of pro hac vice lawyers. The duty is owed to both the client and the court. Regarding the client, the Responsibility for Conduct rule requires that the Iowa lawyer forego the opportunity to limit the nature and scope of the Iowa lawyer's representation to the client, a right that would otherwise exist under Iowa R. of Prof'l Conduct 32:1.2(c). Likewise, Iowa lawyers have collaboration, consultation and advisory responsibilities to clients which include the obligation to engage in strategic planning dialogue, (Iowa R. of Prof'l Conduct 32:1.4(a)(2)) as well as an obligation under Iowa R. of Prof'l Conduct 32:1.4(b) to educate the client. The Responsibility for Conduct rule prevents these obligations from being delegated to the pro hac vice lawyer or otherwise limited by the Iowa lawyer under Iowa R. of Prof'l Conduct 32:1.2(c).

#### Active Participation Rule

The purpose of the Active Participation rule is to provide the client and the court with the assurance that the matter will be handled consistent with the standard of care and professionalism demanded of a fully admitted Iowa lawyer, as an officer of the court. Indeed, Iowa courts have held Iowa lawyers liable for the misdeeds of the *pro hac vice* lawyers, Ideal Instruments, Inc. v. Rivard Instruments, Inc. 243 F.R.D. 322, 348 (N.D. Iowa, 2007) imposing Fed R. Civ. P. 11 sanctions. See also, "Professional Responsibilities of Co-Counsel: Joint Venturers or Scorpions in a Bottle?" 98 KY L.J. 461.

We believe that the Active Participation rule is designed to complement the Responsibility for Conduct rule such that one cannot fully conduct litigation unless one actively participates in it. We recognize that there are certain limited situations where the *pro hac vice* lawyer can operate without the presence of the Iowa lawyer. However, to be consistent with the Active Participation and Responsibility for Conduct rules it is the Iowa lawyer who must determine what they are and set the operational parameters. For example, after due diligence an Iowa lawyer may determine that his or her attendance at a deposition taken solely for discovery purposes is not necessary because the deposition is not likely to be used in evidence or to support a motion during litigation. In that situation the Iowa lawyer may be justified in allowing the client to be represented by the *pro hac vice* lawyer and not run afoul of Iowa R. of Prof'l Conduct 32:5.5 which prohibits assisting the unauthorized practice of law.

Lastly, both the Responsibility for Conduct and Active Participation rules must be read in the context of the co-counsel relationship that exists between the lawyers and the reasonable division of duties between them. See, for example, Macawber Engineering, Inc. v Robson & Miller 47 F. 3d 253, 257-8 (8<sup>th</sup> Cir. 1995) where the court, applying similar Minnesota law, found no duty on local counsel to supervise the *performance of pro hac vice* counsel.

### Conclusion

In Iowa the term “local” counsel must be understood in the context of Iowa Supreme Court Rule 31 pertaining to professional regulation and the Iowa Rules of Professional Conduct. Lawyers practicing in a limited capacity as *pro hac vice* do so only by operation of the fact of their sponsorship by a fully admitted Iowa lawyer who must, at all times, actively participate and take responsibility for the conduct of the matter before the Iowa court or agency. The Iowa lawyer may, after exercising due diligence, exercise discretion in determining the level of participation required by Iowa Sup.Ct. R. 31.14(3). However in doing so the Iowa lawyer should be guided by the overriding ethical obligations to the client.

For the Committee



Nick Critelli, Chair  
Iowa State Bar Association  
Ethics and Practice Guidelines Committee

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