

## Virginia Department of Health Professions

### GUIDELINES FOR *PRO HAC VICE* ADMISSION OF OUT-OF-STATE COUNSEL AND PRACTICE BY NON-LAWYERS

A lawyer who is not a member of the Virginia State Bar but is currently authorized to practice law in another state (out-of-state lawyer) may not represent practitioners in a legal capacity in proceedings before the various health regulatory Boards of the Department of Health Professions (DHP) without first complying with Rule 1A:4 of the Rules of the Supreme Court of Virginia. Rule 1A:4 governs the admission of out-of-state lawyers *pro hac vice* (i.e., “for this occasion”) to appear before Virginia administrative agencies and courts. Appearance *pro hac vice* in a proceeding before a regulatory board is subject to the discretion and approval of the board where such case is pending.

The Rule requires an out-of-state counsel to associate with local counsel (a lawyer who is an active member in good standing of the Virginia State Bar). Local counsel is required to file a motion to associate the out-of-state lawyer with the appropriate Board for permission to appear *pro hac vice*. The motion is to be accompanied by (1) the original, notarized application of the out-of-state lawyer, (2) a proposed Order granting the motion and (3) the \$250.00 application fee made payable to the Clerk of the Supreme Court of Virginia. DHP is responsible for processing the application and for sending the application and fee along with the a copy of the Order granting or denying the motion to associate to the Clerk of the Supreme Court of Virginia.

**Pursuant to Rule 1A:4, the name of local counsel must appear on all notices, Orders, pleadings, and other documents filed in the case, whether by formal motion or via email. This includes continuance requests.**

### General Guidelines

Contact the Administrative Proceedings Division with specific questions. (See contact information below).

- A non-Virginia lawyer may negotiate a consent Order with Board staff or APD staff, but a non-Virginia lawyer *may not* participate in a telephone conference call to consider settlement proposals in matters pending before a special conference committee or matters referred to a Board for formal hearings or to consider modifications of previously issued Board Orders pursuant to Virginia Code § 54.1-2400(13).

*At an informal conference:*

- Only lawyers licensed to practice in Virginia or admitted under Rule 1A:4 may represent a respondent or applicant before a Special Conference Committee. If admitted under Rule 1A:4, local counsel must be present at the proceeding.

- A lawyer not licensed in Virginia or a non-lawyer may assist a respondent or applicant at an informal conference. However, non-Virginia lawyers *may not* make opening or closing arguments or cross-examine witnesses. Their participation is limited to presenting facts, figures, and factual conclusions only.

*At a formal hearing:*

- Only lawyers licensed to practice in Virginia or admitted under Rule 1A:4 may represent respondents or applicants before the Boards at formal hearings. If admitted under Rule 1A:4, local counsel must be present at the proceeding.
- Only lawyers licensed to practice in Virginia or admitted under Rule 1A:4 may participate in oral argument before the Board or any member of the Board regarding any pre-hearing matter on which the Board must rule (such as objections to exhibits). If admitted under Rule 1A:4, local counsel must be present at such proceedings.

**Who is responsible in DHP for ensuring compliance with the Rule?**

Within DHP, the Administrative Proceedings Division (APD) is responsible for processing all applications under the new Rule. All inquiries shall be directed to the designated Adjudication Consultant. Any employee of DHP who becomes aware that out-of-state counsel wishes to or has become involved in a case before any Board shall notify counsel of the Supreme Court Rule, direct them to contact APD, and notify APD in writing of the situation.

**What is APD's role in ensuring compliance with the Rule?**

- Maintain application forms
- Answer inquiries from out-of-state and local counsel and agency staff
- Receive applications, motions of local counsel, fees, and requests for temporary admission
- Present requests for temporary admission to appropriate Board executive for Board consideration
- Determine if application, motion, and draft Order are complete and if there are any impediments to approval
- Present application, motion and Order to appropriate Board executive for Board consideration
- Forward application, fee, and Order to the Clerk of the VA Supreme Court
- Maintain copies of all records
- Maintain database of all applications and appearances by out-of-state counsel
- Provide information and reports to VA Supreme Court as required

Contact Information:

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Policy: 76-39

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