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**River Pilot:
Local Counsel in an Age of National Litigation**

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With litigation becoming more homogenized nationally, the role of local counsel has also evolved. Even in areas like asbestos litigation where national counsel carry with them highly detailed expertise in both elements central to all such cases and an equally intimate knowledge of their clients' defenses, local counsel still perform the critical role of knowing the peculiarities of the law and personalities in their jurisdictions. In that sense, the role of local counsel today is often like that of a river pilot: guiding a well-travelled ship with an experienced crew through the "rocks and shoals" of a particular port-of-call.

In this column, we'll look at three aspects of the professional responsibility side of being local counsel. *First*, we'll examine the mundane but important task of knowing the *pro hac vice* requirements of the local jurisdiction and how to operate the "machinery" under occasionally tight time lines when, for example, cases that were supposed to settle don't. *Second*, we'll discuss by way of example the occasionally significant variation between state professional rules and their ABA Model Rule counterparts that can impact national litigation when appearing on a local stage. *Third*, we'll touch on how local counsel can document their own role as a matter of law firm risk management when they are being hired for the narrow role of local expertise.

Pro Hac Vice Requirements

Pro hac vice requirements are not uniform nationally and can hold surprising parochial variation. My home state of Oregon, for example, requires lawyers being admitted *pro hac vice* (under Oregon Uniform Trial Court Rule 3.170) to have malpractice insurance that is “substantially equivalent” to Oregon’s unique zero-deductible bar-affiliated plan required of all Oregon lawyers in private practice. Our firm has seen some out-of-state lawyers denied *pro hac vice* admission because they are from states with bond-based alternatives and the Oregon rule specifically requires “insurance”—which is a defined term in Oregon law. In other instances, we have assisted lawyers from large national firms with plenty of insurance but high deductibles navigate Oregon’s unusual deductible equivalency requirement.

In addition to the substantive requirements, many jurisdictions now require payment of a temporary license fee to the state regulatory authority along with completion of an application separate from the *pro hac vice* motion filed with the court concerned. Some states, again such as my home state of Oregon, require that the state bar review and approve the application before it is submitted to the court. In states with this two-step process, sufficient time needs to be built into the process to move through the regulatory authority and then file the motion with the court. Particularly if national trial counsel is assigned shortly before trial

when, for example, an anticipated settlement doesn't occur, local counsel need to have a thorough understanding of the mechanics of their local process in the event they need to walk an application through on short notice.

Variations in Professional Rules

Just as local counsel provide important insights into local law, procedure and personalities, they also need to advise national counsel on key variants in the jurisdiction's RPCs. Although most states now use professional rules based on the ABA Model Rules, important state variations remain—usually owing to the development or interpretation of the RPCs in a given state. In Oregon, for example, the “no contact” rule by both wording (Oregon RPC 4.2) and court interpretation (*In re Newell*, 234 P.3d 967 (Or. 2010)), is much broader than the ABA Model rule—extending the prohibition beyond the contacting lawyer's matter to include other matters in which the person involved is represented if the other matter shares some common facts. This can present real limitations if, for example, a former co-worker witness who may appear at trial is represented on the witness' own separate claim.

Documenting Your Role

Most *pro hac vice* rules include the requirement that local counsel “meaningfully participate” without defining that term. There are reported decisions where a lead counsel got cross-wise with a trial judge who, in turn, revoked the lawyer's *pro hac* admission as a sanction and required the local

counsel to step-in mid-trial (see, e.g., *Tahvili v. Washington Mutual Bank*, 197 P.3d 541 (Or. App. 2008)). Thankfully, those extreme examples are rare. In practice, most local counsel today provide the “river pilot” function for national counsel. Because the role of local counsel is built around providing local insights rather than responsibility for the case overall, it is important to document that more limited role with the client. State variants of ABA Model Rule 1.2 permit this approach and it can be a critical element of law firm risk management if an error occurs in an area for which local counsel was not responsible.

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