

Agency Bill Draft Requests for SAVA's Consideration – 2018

Agency: Secretary of State

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Priority #	Short Title	Summary/Rationale	Statutes to be Amended	Fiscal Impact? Yes/No
1	Clarify land board authority	Need to clarify that the Board of Land Commissioners, constitutionally provided for in Art. X, Sec. 4 of Montana's Constitution, retains authority over conservation easement purchases. This clarification would coordinate the land board's authority with 87-1-209 concerning the acquisition and sale of lands or waters.	87-1-209	N
2	Codify Montana Supreme Court rule on out-of-state attorneys appearing without admission to Montana Bar	Currently, under a Montana Supreme Court order concerning rules for admission to the State Bar of Montana, an out-of-state attorney or firm may appear <i>pro hac vice</i> (i.e., "for this occasion" without admission to the State Bar of Montana) in no more than two actions or proceedings in any state court or administrative agency in Montana. The proposed bill would codify this provision. [The Sec. of State's Office understands this may precipitate a legal note from Legislative Services concerning separation of powers.]	See attachment - Pro Hac Vice Rules & FAQs, Section VI. C.	N
3	Revise Commissioner of Pol. Practices administrative attachment to Sec. of State's Office	Currently, the COPP is administratively attached to the Sec. of State's Office but staffing and budgeting is separate and independent. This bill would revise the COPP's staffing and budgeting of the COPP to be integrated within the Sec. of State's Office. This would eliminate the need to provide General Fund appropriations to the COPP because the Sec. of State's Office is funded through proprietary funds (i.e., from administrative fees). The FY 17 GF appropriation to the COPP was about \$700,000.	2-15-411, 13-37-112, and any related sections	Y General fund savings

Pro Hac Vice Rules & FAQ's

2015 AMENDED RULES FOR ADMISSION TO THE BAR OF MONTANA

Supreme Court of the State of Montana, amended by Order AF 11-0244, December 17, 2015.

VI. PRO HAC VICE

A. Upon written application, an attorney who is not admitted to practice law in the state courts in Montana and who is at the time admitted and authorized to practice law in the highest court of another state may appear pro hac vice in any action or proceeding, if an attorney admitted to practice in the courts of Montana is associated as attorney of record.

B. An attorney may not appear pro hac vice under this section if the attorney is a resident of Montana, is regularly employed in Montana, or is regularly engaged in the practice of law or in substantial business or professional activities in Montana, unless the attorney has an application for admission pending with the Bar Admissions Administrator of the State Bar of Montana.

C. Except upon a showing of good cause, no attorney or firm may appear pro hac vice in more than two actions or proceedings in any state court or administrative agency (agency) in Montana. Upon an attorney or firm's second appearance pro hac vice, no further pro hac vice appearances are permitted except upon a showing of good cause. Findings of good cause to exceed the two-appearance limit are not to be routinely granted. For purposes of this rule "good cause" includes, by way of example only, a showing that the attorney or firm seeking to appear pro hac vice possesses experience or expertise not commonly available in the membership of the State Bar of Montana or where the attorney or firm is acting as counsel in a multi-state class action. For purposes of this rule, only those appearances made after November 17, 1998 shall be considered.

D. Applications for pro hac vice must be obtained from the State Bar of Montana. The application form will require that the applicant provide the following information:

1. the applicant's residence and office addresses;
2. the state and federal courts to which the applicant has been admitted to practice and the dates of admission;
3. whether the applicant is a member in good standing in those courts;
4. whether the applicant is currently suspended or disbarred in any court, and if so, a description of the circumstances under which the suspension or disbarment occurred;
5. whether the applicant has been formally notified of any complaints pending before a disciplinary agency in any other jurisdiction and, if so, provide a description of the nature and status of any pending disciplinary complaints;
6. an identification of all law firms with whom the applicant is associated and a description of all pending pro hac vice appearances of the applicant's firm(s) in Montana;
7. the title of each state court and cause in which the applicant has filed an application to appear as counsel pro hac vice, the date of each application, and whether it was granted;
8. the name, address and telephone number of the active member of the State Bar of Montana who is the attorney of record;
9. an affirmation that the applicant will comply with the applicable statutes, law and procedural rules of the State of Montana; be familiar with and comply with the Montana Rules of Professional Conduct; and submit to the

jurisdiction of the Montana courts, the Montana disciplinary process, and the State Bar of Montana with respect to acts and omissions occurring during appearance under this rule and,

10. Rule IV(D)(10) of the 2005 Rules for Admission to the Bar of Montana is amended to read as follows: The completed application along with a one-time payment to the State Bar of the dues currently required of active members of the State Bar along with annual Office of Disciplinary Counsel and Lawyers Fund Assessments.

E. The completed application, along with a fee equal to the annual amount paid by active members of the Montana Bar, must be filed with the Bar Admissions Administrator.

F. The application will be reviewed by the Bar Admissions Administrator, who shall certify the number of prior appearances the applicant has been granted under Rule VI.C., whether the applicant has provided the required information, whether the applicant is in good standing in the other jurisdiction(s) where admitted, and whether Montana counsel is in good standing.

G. Upon certification, the Bar Admissions Administrator shall forward the application to the appropriate court or agency. The court or agency shall enter an order granting or refusing the application and, if the applicant is refused, the court or agency shall state its reasons. The court or agency shall mail a copy of the order to the applicant, counsel of record, and the Bar Admissions Administrator.

H. The Bar Admissions Administrator shall maintain a record of all pro hac vice applications as a public record. Attorneys appearing pro hac vice shall notify the Bar Admissions Administrator upon conclusion of the matter in which the attorney appeared.

I. An attorney appearing pro hac vice under this Rule is subject to the jurisdiction of the Montana courts and agencies with respect to Montana law governing the conduct of attorneys to the same extent as an attorney admitted to practice in the courts of this state. The attorney appearing pro hac vice shall comply with the Montana Rules of Professional Conduct and is subject to the disciplinary jurisdiction of the Montana Supreme Court. The court or agency in which an attorney is appearing pro hac vice or the Montana Supreme Court may, for violations of Montana law, the Montana Rules of Professional Conduct, Rules for Admission to the Bar of Montana, or orders of the court, withdraw its permission for an attorney to appear pro hac vice.

J. Montana attorneys of record shall sign all pleadings, motions, and briefs and participate actively in all phases of the case, including, but not limited to, attendance at depositions and court or agency proceedings, preparation of discovery responses and briefs, and all other activities necessary to be prepared to go forward with the case at all times. A district court or agency, upon motion by local counsel, may waive this Rule based upon a showing of extraordinary circumstances. Upon waiver of the Rule by the district court or agency, all papers subsequently filed shall be signed by counsel actively involved in the case. Such a waiver is not to be routinely granted.

K. Attorneys admitted pro hac vice shall continue to pay annual dues and fees as provided in Rule I.G.6, while the case is pending.

Pro Hac Vice Application Form (Allow 5 working days for processing)

Pro Hac Vice Frequently Asked Questions

How to I file for pro hac vice and what is the fee? An application needs to be sent along with \$495 per attorney to the State Bar of Montana. Attorneys admitted pro hac vice will continue to pay annual dues and fees each year for the term of the Montana litigation or until such time that the State Bar of Montana is advised that the attorney has withdrawn from representation. However, for a lawyer who is appearing pro bono as defined under Rule 6.1 of the Rules of Professional Conduct, the pro hac vice fee shall be a one-time-only fee equal to the amount paid annually by active members of the Montana Bar.

What is the process after you receive my application? The rules above and the application will provide more information. The Bar will then verify that all attorneys are in good standing in the states they're currently licensed and the number of appearances had by the attorney and their firm. Letters will be mailed to the attorneys and the clerk advising of the status of this information. Local counsel will file a motion for the applicant to appear. (The State Bar does not approve or deny applications, as that is up to the discretion of the court hearing the matter.)

What do I file with the Court? In most courts, the local counsel vice will need to file a motion and proposed order; the court will grant or deny the appearance. (The clerk of court will notify the State Bar whether the court approved or denied the appearance.)

Will I be reminded when the annual assessment is due each year? Yes, the Bar will send an invoice to each pro hac vice attorney until we're notified that the matter has been settled or closed. The invoice will show the amount of the dues and fees payable.

Do I need to file an application if my case is in federal court? No. For information about filing pro hac vice in the US Courts in Montana, please go to their website at <http://www.mtd.uscourts.gov>.

Payment of Dues when case is stayed: A lawyer who has been admitted pro hac vice under the Bar admission rules continues under that status until the conclusion of the legal matter for which she or he has been admitted—unless the lawyer properly withdraws before the conclusion of the case. There is no exception regarding the procedural posture of the case.

What is the procedure if local counsel withdraws who is supervising an attorney appearing pro hac vice? The Court has a great amount of latitude whether to allow withdrawal of local counsel and assumption of not only the case by new counsel, but the duties of local counsel to supervise the pro hac attorney. Rule F of the Pro Hac Vice Rules state as follows: "Montana attorneys of record shall sign all pleadings, motions and briefs and participate actively in all phases of the case, including, but not limited to, attendance at depositions and court or agency proceedings, preparation of discovery responses and briefs and all other activities necessary to be prepared to go forward with the case at all times. A district court or agency, upon motion by local counsel, may waive this rule based upon a showing of extraordinary circumstances. Upon waiver of

the rule by the district court or agency, all papers subsequently filed shall be signed by counsel actively involved in the case. Such a waiver is not to be routinely granted."

Therefore, an attorney admitted *pro hac vice* may not continue in a case without local counsel associated to fully participate as cited in the rule above absent a "showing of extreme circumstances". Upon filing of a motion to substitute counsel or a motion to withdraw, the new counsel will need to notify the State Bar of Montana, in writing, that he will be assuming duties of local counsel and the responsibility to oversee the *pro hac vice* attorney. The Bar will then verify the good standing of local counsel and send the court and attorney a letter verifying the new local counsel's status and substitution for previous counsel. It's then up to the court to grant or deny the substitution

Amicus Filings—Out of state counsel is required to associate with local counsel and to file *pro hac vice* if they're filing an amicus brief.

For questions or additional information about *pro hac vice* admissions, contact Sean O'Connor by email at soconnor@montanabar.org or at (406) 447-2204.