



# Arkansas Association of Defense Counsel

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## NEED OUTSIDE HELP? A STEP-BY-STEP GUIDE TO ENSURE COMPLIANCE WITH THE NEW RULE XIV OF THE ARKANSAS RULES GOVERNING PRO HAC VICE ADMISSION TO THE BAR

Many members of the Arkansas Association of Defense Counsel have had their fair share of unpleasant experiences with out-of-state-attorneys and would freely share some of their worst stories if asked. However, it appears the opportunity for members to add to their collection of “horror stories” may be dissipating based on the Arkansas Supreme Court’s new Rule governing *pro hac vice* admission to practice in the State.

On October 20, 2016, the Arkansas Supreme Court issued a *per curiam* Order in *In re Rule XIV of the Rules Governing Admission to the Bar*, which is to supersede the old Rule XIV and take effect January 1, 2017. When comparing the language and requirements of the old rule versus the new one, it is clear many Arkansas Courts and lawyers have had issues – whether they relate to professional conduct and courtesies, economics, or otherwise – with non-resident attorneys practicing within the state. As such, the new Rule XIV places more regulations and burdens on both in and out of state attorneys and is in stark contrast to its older counterpart. This article will address some of the changes between the new and old Rule XIV and offer advice on how to comply with the new changes set to begin in 2017.

The old Rule XIV had *de minimus* requirements for a non-resident lawyer to appear, file pleadings, and conduct trial in all Arkansas Courts. The non-resident lawyer had to: (1) been admitted to practice law with the United States Supreme Court or a Federal or State Court where the attorney resided; (2) been in good standing with his resident state’s bar; (3) reside in a state which afforded

similar comity and courtesy to Arkansas lawyers and (4) file a written statement with the Court submitting to all disciplinary procedures applicable to Arkansas lawyers. See Rules Governing Admission to the Bar, Rule XIV, Practice by Comity (amended by *Per Curiam* May 18, 1992). That’s it. Four requirements. Although it was not mandatory, an Arkansas Court could also require the nonresident attorney to associate with an Arkansas lawyer during the progress of a case.

In contrast, the new Rule XIV list a myriad of requirements for non-Arkansas licensed, non-resident attorneys to participate in Arkansas proceedings. First, subsection (a) of Rule XIV defines “Non-Resident Attorney” as an “attorney admitted to practice law in another State, District of Columbia, or territory, which would allow an Arkansas attorney to seek permission to participate in the proceedings of any particular case in the other courts of the State of licensure of the ‘Non Resident Attorney.’” See Rules Governing Admission to the Bar, Rule XIV, Practice by Comity (amended by *Per Curiam* Order, October 20, 2016; effective January 1, 2017).

Prior to submitting a written, sworn motion requesting permission to participate in a particular Arkansas case, the non-resident attorney must pay a fee of \$200 for each case in which the attorney is requesting to participate. Proof of payment for the \$200 fee will be provided by the Clerk of the Arkansas Supreme Court, and said proof of payment must accompany the *pro hac vice* motion. See Rule XIV(a).

Another drastic change in the new rule is the added materials which must be included in the *pro hac vice* motion. The old rule only required the non-resident attorney to state he would submit to all disciplinary procedures applicable to Arkansas lawyers. In contrast, the new rule requires the

motion to contain: (1) the office address, telephone number, fax number, and email address of the non-resident movant; (2) the name, Arkansas bar ID number and contact information of the Arkansas lawyer whom will be associated with the non-resident attorney; (3) a list of all Arkansas cases, including the case number and caption, in which the non-resident attorney has participated in the two years preceding the filing of the motion; (4) a list of all jurisdictions in which the non-resident attorney is licensed and a statement disclosing whether the non-resident attorney is or is not an active member in good standing of each of those jurisdictions; (5) a statement that the non-resident has or has not been subject to disciplinary action by the Bar or courts he is licensed and a description of any such disciplinary actions; (6) a statement that the non-resident attorney has or has not been denied admission, whether *pro hac vice* or otherwise, to any Federal or State Court; (7) and a statement that the non-resident attorney is familiar with the Arkansas Rules of Professional Conduct and will abide and comply with same. See Rule XIV(b). The motion must also include an affidavit of the Arkansas attorney with whom the non-resident attorney will be associated in the proceeding of the particular case. See Rule XIV(c). The affidavit must contain a statement recommending the non-resident attorney be granted to permission to practice before the Court. *Id.* Finally, the Arkansas attorney must sign the motion filed by the nonresident attorney. *Id.*

The Court is granted broad discretion in granting the non-resident attorney's admission to practice. It may examine the non-resident attorney to determine whether he/she is aware of and will observe the ethical standards required of Arkansas attorneys. See Rule XIV(d). If the Court finds the non-resident attorney is not reputable, has been engaging in the unauthorized practice of law within the state, or for other good cause shown, it may deny the motion. *Id.* While the Court has discretion in granting a *pro hac vice* motions based on the powers bestowed in subsection (d) of the Rule, there is an instance where the Court must deny the Motion.

Subsection (f) of Rule XIV is the biggest change between the new Rule and the old one and will

have the biggest impact on the Arkansas legal community. It states the Court shall deny the *pro hac vice motion* of a non-resident attorney if that attorney has served as counsel, participated or entered a *pro hac vice* appearance in three (3) cases in Arkansas within twelve months of filing the motion. See Rule XIV(f). This subsection is important for two reasons. First, it severely limits the number of proceedings a non-resident attorney may participate in over the course of a year. Accordingly, there will likely be a decrease in non-resident attorneys practicing in courts based on this limitation. Second, it will limit the number of Oklahoma, Missouri, Texas, Louisiana, and Tennessee attorneys who live close or near the Arkansas border and routinely practice within the state without actually having an Arkansas law license. In that respect, this rule may be beneficial and allow Arkansas attorneys on both the plaintiff and defense side to keep clients and business within the borders of the state (like the Arkansas lottery).

Finally, the new Rule allows Arkansas Courts to discipline non-resident attorneys for ethical violations. Subsection (g) states Courts may revoke the permission of a nonresident attorney to participate in Arkansas proceedings and may cite him/her for contempt. See Rule XIV(g). Additionally, the Court may refer the matter to the Arkansas Supreme Court Office of Professional Conduct. *Id.*

In conclusion, if you intend to associate with out-of-state counsel on legal proceedings in Arkansas you need to ensure: (1) the non-resident attorney has participated in less than three Arkansas cases within the past year; (2) paid the \$200 filing fee; (3) has good standing with the bar in which he/she is licensed (4) and strictly complied with the new requirements for the *pro hac vice* motion. Follow these new conditions for the Rule, and you're well on your way to creating new experiences with out-of-state counsel which, hopefully, will be better than the last. In the alternative, you may be able to use the new Rule to get rid of unpleasant and difficult non-resident attorneys who may be a thorn in your side (*i.e.* obstructionist). However, there is no provision in the new Rule indicating it is to be applied retroactively, so absent any language to the contrary, it is presumed to be prospective only.

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