

## Membership in U.S. District Courts

Does one need to be a member of the state where a US District Court or can a bar member from another state be admitted into US District Court in another state? I always thought you had to be a member of the Tennessee Bar to be admitted to the US District Court in Tennessee. But someone told me today that wasn't the case. I could get admitted to any federal court as long as I am a bar member somewhere.

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I can't speak to TN in particular, but generally, it's a hodgepodge. Some districts do have that requirement, others don't.

James S. Tyre, California

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I believe that this is up to the District Courts in each district. I am not aware of any District Courts that permit admissions by attorneys who not members of the state bar where the district is located, other than pro hac vice status, but you can usually find the exact requirements in the local rules or admission procedures. For example, the US District Court for the District of Oregon permits attorneys who are not members of the Oregon State bar to be admitted only as pro hac vice.

I believe there are a few districts that allow for pro hac vice admission without having to retain local counsel. I recall vaguely that the Northern District of Alabama is one of them and was told that pro hac vice admission without local counsel is up to the discretion of the individual judges in the Southern District of New York.

Bert Krages, Oregon

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Generally, that is true to my understanding. We have federal only practitioners here that are not members of the Texas bar. Local rules in federal court may have variances, but otherwise I see it as a common matter.

Darrell G. Stewart, Texas

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N.D. TX, which I just checked more or less, randomly, is one district that allows admission without requiring the lawyer to be a member of the TX bar. I believe that there are about a dozen others, though I haven't done an exact canvass.

James S. Tyre

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Both the Eastern and Western districts of Virginia, at least, require that you be a member in good standing of the Virginia State Bar to join.

Kevin Grierson, Virginia

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It depends on the court.

Imtiaz A Siddiqui, Louisiana

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It is my understanding that the District of Colorado is one federal court that allows full admission (not pro hac vice) to its bar without being licensed in the State of Colorado.

Imtiaz A. Siddiqui

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Jim, thanks.

I once assisted on a case that was pending in the N.D. of Texas but didn't realize the possibility of getting admitted. Maybe other members of list could add to the list of districts where one does not need to be a member of the bar of the state.

Bert Krages

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Maybe a particular federal court allows an attorney to be admitted to practice in that court, without being a member of that State's bar, and not just for pro hac status, but maybe that State's bar might not look favorably upon a lawyer who so acts.

I don't think you could get away with that in CA, even if one of our District Courts allowed it.

Roger Rosen, California

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Roger,

A state bar has no right or authority to regulate the terms under which one can be admitted to practice in federal court.

But no worries about our fair state. None of our 4 federal districts allow admission unless one is a member of the CA State Bar. We try to keep out the riff-raff. 'l-)

James S. Tyre

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The federal courts, like federal agencies, get to determine who practices before them--you don't even have to be a lawyer admitted anywhere if the agency so determines. The states don't have a say in that. See Sperry v.

Florida. <https://supreme.justia.com/cases/federal/us/373/379/>

Kevin Grierson

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I agree that California takes some of the most unreasonable positions when its residents seek the help of an out-of-state attorney to help resolve their legal matters, but it does acknowledge that UPL does not apply to a licensed attorney who is working on matters involving federal jurisdiction. For example, an out-of-state attorney may permissibly send or respond to a demand letter alleging copyright infringement because copyright infringement suits can only be filed in federal court.

But may God help a California resident who wants to have a trusted out-of-state attorney, who is a highly experienced commercial litigator with reasonable rates, write a letter to a California company in an attempt to resolve a straightforward and minor contract issue.

Bert Krages

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Every district has its own rules. Some require admission to the state, some don't. If the federal courts I'm admitted to (all districts in Illinois, Michigan, Wisconsin and Minnesota) I think only Minnesota requires admission to the state bar

Lesley Hoenig, Michigan

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There is, at least, a sixth circuit opinion that states a state can't discipline a member of a federal district for upl by practicing only in that federal court. So, the state might like it, but it is the district that had the ability to discipline an attorney, not the state when it comes to activity if a federal district Court

Lesley Hoenig

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The local rules vary widely. In the cases of Delaware and Nevada, a lawyer who is admitted to the bar of that state and who has been admitted to the federal bar of that state cannot appear without resident local counsel in a case unless the lawyer has an office in that state. Move out of state and lack an office in the jurisdiction, you need a local. In NDTX and NDOK, a non-resident member of the district court bar still needs to obtain leave to proceed with local counsel. We always file a motion for such leave in these districts with a history of prior cases in which we have acted without a bar member who is resident in that district.

I believe that the only jurisdiction that still requires a federal bar exam to be admitted is the District of Puerto Rico. Interestingly, one need not be a member of the PR commonwealth bar to obtain admission to federal court. SDFL and WDTX used to require a local bar exam, but no longer do so. A few districts require a cle course for those who have never been admitted to federal court in that state. The SBFL requires that a lawyer admitted in that court take a certain number of bankruptcy CLE hours to remain active after admission.

The final oddity that we have encountered is a local sponsorship requirement. The prospective admittee to the federal district court bar needs a sponsor who is admitted to that court in order to qualify for admission. In a few cases, the sponsor must appear in court with the prospective admittee to so move for admission of the applicant. Provincialism is alive and well in some federal district courts.

Craig A. Stokes, Texas

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This is my least favorite requirement of Federal Admission (state bar membership in the same state as the Federal Court).

Remember the guy who mouthed off to EDNY Judge Denny Chin last week and go escorted out? He was complaining about the admission requirements (inappropriately so in his case), but Judge Weinstein said the 1-year-personal-knowledge requirement of a sponsor was likely unconstitutional.

I was thinking the same about the state bar membership requirement. Why do I have to be a member of the NY State Bar to practice copyright law in EDNY or SDNY? I'm already admitted and in good standing in WDNY and NDNY.

Nothing about being NY State admitted would make me a better copyright lawyer.

I believe these "extra" requirements are protectionist and unconstitutional. As Judge Weistein cited in the district court opinion in that case, "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." Baird v.

State Bar of Arizona, 401 U.S. 1, 8 (1971).

Just my thoughts. I love hearing your thoughts and opinions as well.

Leonard J. French

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I know of two people who practiced before Fed District Court in PA while suspended/disbarred by PA. Point being, if you're a member of a District Court, perhaps you need not be a member of any state bar.

Russ Carmichael, Pennsylvania

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Practiced, yes, I can see how they could get there. But I doubt they would be admitted to a new Federal District while not in good standing with one or more current admissions.

Leonard J. French

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It depends on the court -- some will be fine with pro hac vice admission to a particular case (with a local counsel involved). I know California federal courts require CA bar admission to be admitted -- sort of like the Hotel California in reverse :)

I am a member of the Eastern Michigan district, but no MI bar admission. My partner is in MA district court. That being said, I would be very mindful of any UPL requirements in the state that might be tripped up if you take an action in their state (there is usually a statutory exemption for federal LAW practice only - but diversity jurisdiction is under state law practice typically).

Murtaza Sutarwalla, Texas

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“I know of two people who practiced before Fed District Court in PA while suspended/disbarred by PA.”

That’s an interesting side-note to the issue of admission to federal court. While most (all?) federal courts have some sort of requirement to be admitted to the bar of the court, few address the inverse—the ability to disbar someone once admitted.

For example, Fred Phelps (founder of Westboro Baptist Church—the group that protests outside soldiers’ funerals) was originally a well-respected civil-rights attorney in Kansas, he eventually was disbarred by the Kansas Supreme Court (for reasons I won’t go into), but continued to practice before the District of Kansas. They had no mechanism to disbar an attorney once admitted (even if the attorney was not licensed by any state).

In his case, the chickens eventually came home to roost, and he resigned his rights to practice in D.Kans. as part of a settlement.

Brian H. Cole, California

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The district can come up with a way to disbar. I know someone who was suspended in Michigan and was also suspended in both districts. Eventually he was allowed to resume practicing, but to this day he still cannot practice in Western District of Michigan.

Lesley Hoenic

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I’m just getting involved in a pro bono case in New York, not even sure what district yet, but the other out of state attorney told me we could register as members in that District.

Larry A. Frost, Minnesota

