

May 23, 2018

**BEFORE THE JUDICIAL COUNCIL OF THE  
NINTH CIRCUIT**

**PETITION TO MODIFY OR ABROGATE LOCAL RULE**

Pursuant to 28 U.S.C. § 2071(b), the District Courts of the United States are authorized to promulgate Local Rules. Those Rules remain in effect unless “modified or abrogated by the judicial council of the relevant circuit.” 28 U.S.C. § 2071(c)(1). On February 6, 2018, petitioner Public Citizen Litigation Group, joined by 12 other organizations and individuals, petitioned the United States District Court for the Northern District of California to amend its Local Rule 11-1(b), which limits admission to that Court to attorneys who are active members of the State Bar of California. The Court denied the Petition, without explanation. Petitioners now ask the Judicial Council of the Ninth Circuit to review that denial.

The Petition, a copy of which is attached, did not contend that the Local Rule was unlawful. Rather, it asked that the Rule be amended to delete the requirement that applicants must be active members of the Bar of the State of California for three basic reasons:

(1) The requirement for California Bar admission does not bear any reasonable relationship to the actual practice in that Court because the procedures followed are established by federal rules and because the legal issues in the majority of the cases in that Court arise under federal, not California law.

(2) Because the California Bar does not allow attorneys admitted in other jurisdictions to be admitted on motion, every applicant must take the California Bar exam. That requirement imposes unjustified burdens of time and money attorneys whose primary reason to obtain admission to that Bar is to be admitted to practice in the Northern District. In addition, once admitted, an attorney must continue to be an active dues-

paying member of the California Bar to remain a member of the Bar of the Northern District, even when the attorney does not regularly practice in California. These burdens are wholly out of proportion to any possible benefit that might be realized for clients and the District Court from imposing such a requirement.

(3) The requirements for pro hac vice admission — in particular the payment of \$310 for each attorney in each case — are burdensome, making pro hac vice admission an inadequate alternative to full admission.

An Addendum to the Petition described the eleven non-profit organizations and two attorneys that joined the Petition and identified their interests in the proposed change in Rule 11-1(b). Except for the American Civil Liberties Union, all of the original petitioners are petitioners before the Judicial Council.

The Petition noted that, pursuant to Local Rule 83-2, all amendments to Local Rules require public notice and an opportunity to submit comments, and it requested that such a public rulemaking process be commenced. Because all of the District Courts in the Ninth Circuit have similar requirements, copies of the Petition were sent to the Clerks of the other District Courts, as set forth in the attached cover letter to the Chief Judge of the Northern District.

Instead of commencing a public rulemaking proceeding, the Local Rules Committee of the Court and then the entire Court voted to deny the Petition. The attached letter dated April 3, 2018 from Chief Judge Phyllis Hamilton gave no reasons why public comments were not sought, and offered no reason for denying the Petition.

Because the Court gave no reason why the Petition was denied, petitioners have nothing to add to what is in the Petition. Petitioners are not aware of any procedural requirements applicable to a review of a Local Rule by the Circuit Council, but suggest that the public

comment procedure in 28 U.S.C. § 2071(b), applicable to amendments to other rules, would be appropriate in connection with the Council's review of Local Rule 11-1(b) of the Northern District. Petitioners request that, after receiving comments from interested persons, the Council direct the District Court for the Northern District of California to amend Local Rule 11-1(b) to provide as specified on page 5 of the Petition.

Respectfully submitted,

A handwritten signature in blue ink that reads "Alan B. Morrison". The signature is written in a cursive style and is positioned above the typed name.

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