



**TABLE OF CONTENTS**

	<u>PAGE</u>
I. PRELIMINARY STATEMENT .....	1
II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.....	1
III. ARGUMENT .....	4
A. STANDARD OF REVIEW .....	4
B. SUBJECT TO REASONABLE CONDITIONS, ABIM DOES NOT OBJECT TO THE ADMISSION OF ADDITIONAL COUNSEL ON DEFENDANT’S BEHALF.....	5
III. CONCLUSION.....	6

**TABLE OF AUTHORITIES**

	<u>PAGE(S)</u>
<u>CASES</u>	
<i>Ghaleb v. U.S. Ship Mgmt.</i> , No. 04-cv-84, 2005 WL 1225177 (D.N.J. 2005) .....	4
<i>Kohlymayer v. Nat'l R.R. Passenger Corp.</i> , 124 F. Supp. 2d 877 (D.N.J. 2000) .....	4
<i>Nat'l Sec. Sys., Inc. v. Iola</i> , No. 00-cv-6293, 2009 WL 3756897 (D.N.J. 2009) .....	4
<i>Thoma v. A.H. Robins Co.</i> , 100 F.R.D. 344 (D.N.J. 1983) .....	4
<u>OTHER AUTHORITIES</u>	
<i>L.Civ.R.</i> 101.1 .....	4, 5
Lite, <i>New Jersey Federal Practice Rules</i> , comment 4(a) on <i>L.Civ.R.</i> 101.1 (2016) .....	4

**I. PRELIMINARY STATEMENT.**

Plaintiff/counterclaim defendant American Board of Internal Medicine (ABIM) and third-party defendants Richard Baron, M.D., Christine K. Cassel, M.D., Lynn O. Langdon, Eric S. Holmboe, M.D., David L. Coleman, M.D., Joan M. Feldt, M.D., and Naomi P. O'Grady, M.D. (collectively, the "ABIM individuals") (for ease of reference, ABIM and the ABIM individuals are collectively referred to here as "ABIM") submit this brief as their consolidated opposition to the motions of defendant/counterclaim plaintiff Jamie A. Salas Rushford, M.D. ("defendant") for the admission *pro hac vice* of three additional lawyers from Puerto Rico: Dora L. Monserrate-Peñagaricano, Esq., Jaime A. Salas-Soler, Esq., and Antonio E. Valiente-Rivera, Esq.

Because the involvement of nonadmitted out-of-state attorneys has become a source of delay and non-cooperation on defendant's part, and because there is no good reason for the Court to exercise its discretion in granting the full relief requested by defendant, ABIM respectfully submits that defendant's applications be denied or, in the alternative, that the admission *pro hac vice* of any out-of-state attorney be subject to several reasonable conditions.

**II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On December 19, 2014 -- almost a full year ago -- Marco A. Gonzalez, Jr., an attorney admitted to practice law in New Jersey, entered his appearance on behalf of defendant. [D.E. No. 5.] Almost nine months later, on September 11, 2015, defendant sought leave for Guillermo Mena-Irrizary, Esq. to appear *pro hac vice*. [D.E. No. 30.] As is customary in this judicial district, during a telephone case management conference on September 16, 2015, ABIM advised the Court that it did not oppose that motion, largely because Mr. Mena-Irizarry already

was one of defendant's counsel of record in the parallel, protective action ABIM had filed in the District of Puerto Rico;<sup>1</sup> the Court granted the motion on September 16, 2015. [D.E. No. 32.]

On November 25, 2015, the day before Thanksgiving, defendant filed three additional motions to admit attorneys *pro hac vice*: one each for Dora L. Monserrate-Peñagaricano, Esq. [D.E. No. 47], Jaime A. Salas-Soler, Esq. [D.E. No. 48], and Antonio E. Valiente-Rivera, Esq. [D.E. No. 49].<sup>2</sup> Those applications fail to disclose three relevant facts. ***First***, the applications fail to note that Ms. Monserrate-Peñagaricano represented defendant during his internal appeal of ABIM's disciplinary actions against him, the same internal appeal he attacks in his counterclaims and third-party complaint. [See D.E. No. 33 ¶¶ 52–59.] In short, by defendant's own pleading, Ms. Monserrate-Peñagaricano has represented defendant in the claims underlying his counterclaims and third-party complaint, yet he has not brought her to the fore until now. ***Second***, the applications also fail to note that Mr. Solas-Soler is defendant's father. And, ***third***, none of the applications makes any representations as to why the participation of either Ms. Monserrate-Peñagaricano or Messrs. Salas-Soler or Valiente-Rivera is

---

<sup>1</sup> See n.2, *post*.

<sup>2</sup> In stark contrast to defendant's conveniently asserted concern about "severe and unjust expense" and his likewise opportunistic representations that this litigation has caused him "severe financial hardship," [D.E. No. 18 at 2-3], coupled with his preposterous claim -- made directly to this Court -- that defendant "has been bankrupted" by this case [D.E. No. 22 at 6], his latest flurry of *pro hac vice* motions would result in defendant being represented by five separate attorneys in this relatively straight-forward action. One must conclude that, despite defendant's earlier protestations, the cost of these proceedings is no longer of concern to him.

These *pro hac vice* applications are even more curious when placed in context. As the Court is aware, there was a parallel, protective action filed in the District of Puerto Rico. In his defense of that action, defendant did not see the need to be represented by these new counsel; in that case, he was represented by three lawyers: Mr. Mena-Irizarry, Maria S. Piñeiro-Soler, Esq. and Ruben T. Nigaglioni, Esq. See D.P.R. Civil Docket for Case No. 3:15-cv-01016-JAG (listing entries of appearance), only one of which managed to bridge the gap between this action and its identical twin in Puerto Rico.

needed in this case, or what professional shortcoming on the part of either of Messrs. Gonzalez or Mena-Irizarry the *pro hac vice* applications are intended to fill or what special skills the applicants otherwise possess.

This opposition followed, noting that, because neither of Ms. Monserrate-Peñagaricano nor Messrs. Salas-Soler or Valiente-Rivera has claimed any particular expertise otherwise lacking in either of defendant's current counsel of record, ABIM respectfully suggests that the Court either deny all three of these applications outright, or condition the *pro hac vice* admission of Ms. Monserrate-Peñagaricano and/or Messrs. Salas-Soler and/or Valiente-Rivera as follows:

- (1) That all communications with the Court concerning this litigation shall be directed through a lawyer with a plenary admission to this Court. (Marco A. Gonzalez , Jr., at present);
- (2) That all filings be made solely by a lawyer with a plenary admission to this Court;
- (3) That all communications to and with ABIM shall be made through a lawyer with a plenary admission to this Court to ABIM's lead counsel;
- (4) That only one unconditionally admitted lawyer per side shall be permitted to address the Court or defend or take depositions; and,
- (5) That a lawyer with a plenary admission to this Court shall attend all pretrial and other proceedings with, and directly supervise the conduct, of any *pro hac vice* admitted counsel.

The reasons for these determinations and proposed conditions follow.

### III. ARGUMENT

#### A. STANDARD OF REVIEW.

*L.Civ.R.* 101.1(1) provides the relevant rule of decision. It states that

[a]ny member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this Court under *L.Civ.R.* 101.1(b), may in the discretion of the Court, on motion, be permitted to appear and participate in a particular case.

Although *pro hac vice* admission generally may be granted as a matter of course pursuant to *L.Civ.R.* 101.1, under “particular circumstances . . . the Court [may] either . . . deny an application altogether or . . . grant it subject to various conditions.” *Lite, New Jersey Federal Practice Rules*, comment 4(a) on *L.Civ.R.* 101.1 (2016) (citing *Nat’l Sec. Sys., Inc. v. Iola*, No. 00-cv-6293, 2009 WL 3756897 (D.N.J. 2009), *Kohlymayer v. Nat’l R.R. Passenger Corp.*, 124 F. Supp. 2d 877 (D.N.J. 2000), and *Thoma v. A.H. Robins Co.*, 100 F.R.D. 344 (D.N.J. 1983)). Under *L.Civ.R.* 101.1(c)’s standard, courts in this District enjoy “wide discretion in granting admission to practice *pro hac vice*.” *Ghaleb v. U.S. Ship Mgmt.*, No. 04-cv-84, 2005 WL 1225177, at \*3 (D.N.J. 2005) (citing *Thoma, supra*, 100 F.R.D. at 348).

For the reasons that follow, under *L.Civ.R.* 101.1(c)’s standard, these applications should be denied or subject to the reasonable conditions ABIM proposes.

#### B. SUBJECT TO REASONABLE CONDITIONS, ABIM DOES NOT OBJECT TO THE ADMISSION OF ADDITIONAL COUNSEL ON DEFENDANT’S BEHALF.

Subject to reasonable conditions, ABIM does not object to the admission of additional attorneys *pro hac vice* on defendant’s behalf; provided those reasonable conditions are imposed, defendant can seek leave to have as many and as varied lawyers apply for admission *pro hac vice* as may suit his fancy. The need for the proposed reasonable conditions on

defendant's promiscuity in retaining counsel in this action only arises to the extent that defendant's desire to retain and speak through multiple counsel adversely affects either the Court's processes or ABIM.<sup>3</sup> The reasonable conditions ABIM proposes protect against others having to pay for defendant's lawyer-retention spree.

To be clear, ABIM does not necessarily seek the outright denial of the motions for *pro hac vice* admission, although, in the circumstances presented, denial of those motions certainly remains comfortably within the Court's discretion. ABIM does respectfully request that, if granted, those admissions, and any others defendant seeks to admit, be subject to the following reasonable restrictions:

- (1) That all communications with the Court concerning this litigation shall be directed through a lawyer with a plenary admission to this Court. (Marco A. Gonzalez , Jr., at present);
- (2) That all filings be made solely by a lawyer with a plenary admission to this Court;
- (3) That all communications to and with ABIM shall be made through a lawyer with a plenary admission to this Court to ABIM's lead counsel;
- (4) That only one unconditionally admitted lawyer per side shall be permitted to address the Court or defend or take depositions; and,
- (5) That a lawyer with a plenary admission to this Court shall attend all pretrial and other proceedings with, and directly supervise the conduct, of any *pro hac vice* admitted counsel.

Granting leave to appear *pro hac vice* subject to conditions is explicitly allowed under *L.Civ.R.* 101.1(c). This is one of those instances where the imposition of conditions is not

---

<sup>3</sup> Again, it is telling that, when sued in Puerto Rico -- where all of these new lawyers are resident and where, presumably, their skills are at their best -- defendant dispensed with the need to retain any of them. *See n. 2, ante.*



only warranted, but salutary. Experience in this case teaches us that the attempts of the out-of-state attorneys to participate prematurely in this litigation has caused confusion and delay, and has been responsible for non-cooperation on the part of defendant's admitted attorneys. The conduct of out-of-state counsel and their attempts to participate unnecessarily in meet-and-confer discussions before properly being admitted has made obtaining even simple "yes" or "no" responses to ABIM's inquiries in a timely fashion a needlessly arduous task. No doubt, defendant has an interest in being represented by counsel of his choice. That interest, however, does not and cannot trump the important concerns this Court and ABIM must confront in this litigation, and defendant's choices cannot result in an undue burden on the Court and ABIM.

For those reasons, and in the interest of the preserving valuable judicial resources and ensuring that this litigation may proceed in a civil and professional manner, ABIM respectfully requests that, if at all granted, defendant's motions concerning the *pro hac vice* admissions of Ms. Monserrate-Peñagaricano and/or Messrs. Salas-Soler and/or Valiente-Rivera be subject to the reasonable conditions ABIM has proposed.

### **III. CONCLUSION.**

For the foregoing authorities, arguments and reasons, ABIM respectfully requests that (1) defendant's motions seeking leave for Ms. Monserrate-Peñagaricano and/or Messrs. Salas-Soler and/or Valiente-Rivera to appear *pro hac vice* be denied or, if granted, they should be subject to the reasonable condition ABIM has proposed; and (2) the Court issue such other and further relief as the Court may deem just and proper.

////

////

Respectfully submitted,



---

Roberto A. Rivera-Soto  
riverasotor@ballardspahr.com

Hara K. Jacobs  
jacobsh@ballardspahr.com

Casey G. Watkins  
watkinsc@ballardspahr.com

**BALLARD SPAHR LLP**  
210 Lake Drive East – Suite 200  
Cherry Hill, New Jersey 08002-1163  
Tel. 856.761.3400

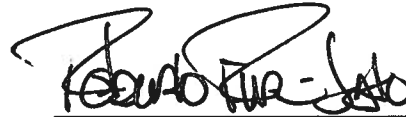
*Attorneys for plaintiff/counterclaim defendant  
American Board of Internal Medicine and third-  
party defendants the ABIM individuals*

**DATED:** December 7, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2015, I electronically filed the foregoing consolidated memorandum of plaintiff/counterclaim defendant ABIM and third-party defendants the ABIM individuals to the motions of defendant/counterclaim plaintiff/third-party plaintiff Jaime A. Salas Rushford, M.D. for the admission *pro hac vice* of Dora L. Monserrate-Peñagaricano, Esq., Jaime A. Salas-Soler, Esq., and Antonio E. Valiente-Rivera, Esq. with the Clerk of Court using the CM/ECF system, and thereby served all counsel of record with a copy thereof.

**DATED:** December 7, 2015



---

Roberto A. Rivera-Soto