Why Not One Admission to One Judicial Power of the United States?

by Matthew C. Kane

Matthew C. Kane is a partner in the Oklahoma City law firm of Ryan Whaley Coldiron Jantzen Peters & Webber and teaches courses on a variety of litigation and comparative law topics. His scholarship and practice focus on criminal, international, and complex tort litigation.

While there are two sides to every story, the search for a viable rationale behind the required admission to multiple federal districts seems about as successful as hunting for snipe.

Take this scenario. One party has filed litigation in Delaware, where our lawyer has been admitted to practice, based primarily on the fact that she passed the bar in that state. Meanwhile, the defendant in the Delaware litigation has initiated a case in Virginia over a somewhat related but not identical dispute against the Delaware plaintiff. While the parties may argue for consolidation in one court or the other, neither court is necessarily required to relinquish its case. Suddenly our lawyer, despite having been previously admitted in another federal district, must now be admitted in a new jurisdiction (whether permanently or *pro hac vice*) through a process that changes considerably depending on the district, the only consistency being the invariably sizeable fees imposed.[1] The lawyer must serve two masters, comporting with requirements for both jurisdictions. What happens when the parties agree to utilize the same discovery in both cases? When a dispute arises over deposition stipulations or meet-and-confer obligations? Uniform rules for litigation and ethical practice in federal court would likely make a much greater impact on attorney conduct, but that is an issue for another day. Let's start with simply requiring a single admission for all federal district courts, thus vastly simplifying the process.

The argument often advanced for distinct attorney admissions to various federal districts is that each state governs the practice of its own lawyers and that federal district courts utilize state ethics rules and bar mechanisms for the state in which the federal district court sits to effectuate attorney discipline, usually in combination with local court rules on various issues. This position is weak at best. For one, it completely ignores the fact that attorneys are generally required to be admitted in multiple districts within the same state, although often in a more streamlined procedure. More importantly, it minimizes a judge's actual ability to maintain control over his or her own courtroom.

Can you think of a single federal judge who ever even appeared incapable of ensuring that attorneys comply with their obligations to court, opposing counsel and parties, via the judge's power to sanction and ultimately bar an attorney from practice in that federal judicial district? The black robe carries a certain weight with it. While state bar associations vary in their disciplinary regimes, often focusing almost exclusively on attorney use of client funds at the expense of examination of a plethora of other wrongdoing, a federal judge may sanction the attorney or bar him entirely from future practice in that district, without any reliance on the state system. Such penalties are far more certain than what a state bar may do and have a significant deterrent effect on attorney conduct. Whether an attorney is formally admitted in each jurisdiction or is simply admitted once to every federal district court jurisdiction would not change the judge's ability to mandate compliance with local rules or otherwise control his or her courtroom.

While state admissions are closely tied with issues of sovereignty and federalism—topics that often trump pragmatism and efficiency—the same considerations are not in play when addressing admissions to various federal district courts. Federal districts are not independent, not separate sovereigns. They are a part of a hierarchical federal judicial structure comprising the third branch of U.S. government, required to apply the laws of the United States and to follow the precedent of the Supreme Court. Admission to one should be admission to all.

If absolutely essential, admission to a second federal district court should be a simple, uniform process. Have you been previously admitted to another federal district court? Are you in good standing with that federal district court? Are you familiar with the local rules of this district, and any additional ethical obligations that might be imposed, and understand that you are bound to follow them? Have you been convicted of a felony or been party to any disciplinary proceeding? Three "yeses" and a "no," and you are in.

The simple fact is this, as the world continues to contract, legal issues spill over not just in multiple federal jurisdictions, or multiple states, but multiple countries and continents. Admission to various federal district courts is one of many barriers to the evolving, expanding practice of law, but one that can actually be remedied. A system that fails to recognize this reality is broken and in immediate need of repair. History, however, is a weighty anchor, and, sadly, it will likely require another generation of lawyers and judges, frustrated with such an unnecessary burden, to capture this elusive beast. ☉

Endnotes

[1]While dated, a 1995 Federal Judicial Center paper on this topic provides a quick means for appreciating the scope of this problem, as it includes a table spanning some 44 pages addressing each jurisdiction's admission requirements. Marie Cordisco, *Analysis of Table Depicting Eligibility Requirements For, and Restrictions on, Practice Before the Federal District Courts*, Fed. Judicial Ctr. (Nov. 1995), http://www.fjc.gov/library/fjc_catalog.nsf/autoframepage!openagent&url=/library/fjc_catalog.nsf/D UnpublishedResearch!openform&parentunid=0E709D1335B0388F85256CA30055CA36.

Editorial Policy

The Federal Lawyer is the magazine of the Federal Bar Association. It serves the needs of the association and its members, as well as those of the legal profession as a whole and the public.

The Federal Lawyer is edited by members of its Editorial Board, who are all members of the Federal Bar Association. Editorial and publication decisions are based on the board's judgment.

The views expressed in *The Federal Lawyer* are those of the authors and do not necessarily reflect the views of the association or of the Editorial Board. Articles and letters to the editor in response are welcome.