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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

NEW JERSEY PROTECTION AND  
ADVOCACY, INC., a New Jersey nonprofit  
corporation,

Plaintiff,

v.

JAMES DAVY, In his Official Capacity as  
Commissioner of Human Services for the State  
of New Jersey,

Defendant.

CIVIL ACTION

No. 05-01784 (SRC)

**MEMORANDUM OF LAW IN REPLY TO DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTIONS FOR *PRO HAC VICE* ADMISSIONS**

Plaintiff New Jersey Protection and Advocacy, Inc. ("NJP&A"), by way of the undersigned counsel, hereby submits this Memorandum of Law in reply to Defendant's opposition to NJP&A's motions for the *pro hac vice* admissions of Ira Burnim, Jennifer Mathis and Alison Barkoff (the "Bazelon Center attorneys").

**I. FACTS**

Since its founding in 1994, NJP&A has served to protect and advocate for New Jersey citizens with disabilities by pursuing complex litigation with the support of outside

counsel. In prosecuting this case, NJP&A has relied, and will continue to rely, on the assistance of the attorneys at the Judge David L. Bazelon Center for Mental Health Law (the “Center” or “Bazelon Center”) for their unique expertise and experience in litigation seeking to correct abuses in public service systems for people with mental illness.<sup>1</sup> By way of the instant motions, NJP&A seeks the *pro hac vice* admissions of three Bazelon Center attorneys with substantial experience in that regard.

The Bazelon Center’s authority as a leader in the field of mental disability law is beyond dispute. Over the course of its history, the Center’s work has resulted in some of the leading Supreme Court decisions in the field. Supplemental Decl. ¶ 3(a). For example, the Center is known nationally for its expertise in the subject of this litigation - community integration of people with mental illness and the implementation of the Supreme Court’s decision in Olmstead v. L.C., 527 U.S. 581 (1991). Id. ¶ 6. In fact, the Olmstead plaintiffs approached the Center for assistance, and Bazelon attorneys worked extensively with co-counsel on their case. Id. ¶ 8. In the years since Olmstead, the Center has regularly co-counseled on ADA community integration cases with many Protection and Advocacy agencies (“P & A”) such as NJP&A and is currently working with several P & A’s on Olmstead cases and investigations. Id. ¶ 9.

The Bazelon Center has a longstanding relationship with NJP&A. The Center frequently provides legal advice and technical assistance to P & A lawyers across the country, including NJP&A’s in-house attorneys; prepares monthly and quarterly papers on topics relating to the mission of P & A’s, including NJP&A; conducts trainings for P & A’s and makes regular presentations at national P & A conferences attended by NJP&A. Id. ¶ 11.

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<sup>1</sup> NJP&A has also engaged the Pepper Hamilton firm, *pro bono*, for its civil litigation expertise.

The three Bazelon Center attorneys for whom NJP&A seeks *pro hac vice* admission have extensive experience in community integration litigation. Id. ¶ 14. Accordingly, they are uniquely suited to represent NJP&A with respect to this highly specialized area of law.

## II. LEGAL ARGUMENT

Defendant's opposition to the Bazelon Center attorneys' *pro hac vice* applications runs directly counter to the well-established approach taken by this court in admitting out of state attorneys *pro hac vice*. "Typically, a liberal approach is taken by federal courts in all jurisdictions in allowing out-of-state attorneys to practice in federal courts of jurisdictions where they are not admitted to the bar." Kohlmayer v. Nat'l R.R. Passenger Corp., 124 F. Supp. 2d 877, 880 (D.N.J. 2000). In the District of New Jersey, like most other districts, motions for *pro hac vice* admission are normally granted as a matter of course. Id.

Local Rule 101.1 governs *pro hac vice* appearances in the District of New Jersey.

Pursuant to this rule:

[a]ny attorney may be admitted *pro hac vice* if such attorney is (1) a member of the bar of another federal court or of the highest court of any state, (2) in good standing before such court, (3) not under suspension or disbarment by any court, state or federal, and (4) not admitted to practice by the New Jersey Supreme Court. . . .

Local Rule 101.1 cmt. 4(a). Although Defendant's incorrect interpretation of Thoma v. A.H. Robins Co., 100 F.R.D. 344, 349 (D.N.J. 1983) would lead this Court to believe otherwise, without evidence of unusual circumstances, there are no factors other than the elements of Local Rule 101.1 that determine whether *pro hac vice* admission should be granted. Instead, attorneys seeking admission must only meet the Local Rule 101.1 elements quoted above, and a denial of *pro hac vice* admission may be warranted only in cases where the party opposing admission provides evidence of unusual circumstances and the factors in support of admission "are outweighed by the court's need to fairly and efficiently manage the litigation on its docket." Id.

Consistent with the liberal standard this Court applies to *pro hac vice* applications, the District of New Jersey only refuses *pro hac vice* admission in the most unusual circumstances such as where attorneys have a record of unprofessional behavior or a record of wasting judicial resources. See Kohlmayer, 124 F. Supp. 2d at 883 (denying *pro hac vice* admission to an attorney with a history of uncivilized behavior and wasting judicial time); Thoma, 100 F.R.D. at 348-49 (refusing admission of out-of-state counsel with a history of “thwart[ing] the progress of litigation”); see also Jacob v. Nat’l R.R. Passenger Corp., 63 Fed. Appx. 610, 611-612 (3d Cir. 2003) (upholding denial of *pro hac vice* admission to an attorney with a history of assaulting opposing counsel and causing mistrials). Thus, barring the unusual circumstances outlined above, a party’s right to representation by its chosen counsel should be given deference, and admission should “not be denied solely because the court considers the attorney’s participation in the case to be ‘superfluous.’” Local Rule 101.1 cmt. 4(a) (quoting Berkowitz v. Midlantic Corp., No. 90-1811 (D.N.J. slip op. filed May 28 1991) (J. Sarokin) at 7). In this case, the Bazelon Center’s participation would bring valuable expertise in a complex area of law and is not superfluous.

Here, the Bazelon Center attorneys must be admitted because they fulfill the criteria in Local Rule 101.1, and the Defendant has not – and cannot – come forward with any evidence that these attorneys have a record of unprofessional behavior, ethical complaints, or other unusual circumstances that would warrant a denial of their admission to this Court. As set forth in their declarations, each of the Bazelon Center attorneys are current members in good standing of the bars of foreign state and federal jurisdictions, and none is a member of the New Jersey bar. Thus, the elements for *pro hac vice* admission in Local Rule 101.1 have been fulfilled.

Furthermore, failure to admit the Bazelon Center attorneys would prejudice NJP&A as it would interrupt work that the Bazelon Center has undertaken on behalf of NJP&A since the inception of this case. NJP&A asked the Center for assistance because the Bazelon Center attorneys specialize in Olmstead litigation concerning community integration of people with mental illnesses – the exact issue presented in this case. Second, the Bazelon Center, through these attorneys and others, has a long-standing relationship with NJP&A. And third, there is a lack of local counsel with the expertise held by the Bazelon attorneys in the particular field of community integration litigation and other Olmstead issues.<sup>2</sup>

### III. CONCLUSION

A party's choice of counsel, even if deemed "superfluous" (which the choice here clearly is not), is not grounds for denial of a *pro hac vice* motion. At stake in this litigation is the health and welfare of nearly 1000 New Jersey citizens with mental illnesses. By engaging Pepper Hamilton as local counsel and relying upon the participation of the Bazelon Center attorneys for their expertise in mental health law, NJP&A has assembled an appropriate litigation team to represent it in this matter. The defendant has come forward with no "unusual circumstances" that can trump NJP&A's right to be represented by its counsel of choice.

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<sup>2</sup> Defendant's argument that it would be prejudiced by the admission of the Bazelon Center attorneys because NJP&A is demanding attorneys' fees is not a factor to consider in ruling on *pro hac vice* applications. Furthermore, any award of attorneys' fees to NJP&A will be subject to court approval thereby protecting the Defendant from inordinate fees.

For the foregoing reasons, NJP&A respectfully requests that the motions be granted and that Ira Burnim, Jennifer Mathis and Alison Barkoff be admitted *pro hac vice*.

/S/ Jordan A. Stern

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