

Order

Michigan Supreme Court
Lansing, Michigan

December 21, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-31

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Proposed Amendment of
Rule 5 of the Rules for the
Board of Law Examiners

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5 of the Rules for the Board of Law Examiners. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at <http://courts.michigan.gov/supremecourt/Resources/Administrative/ph.htm>.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 5 Admission Without Examination

- (A) An applicant for admission without examination must
- (1) qualify under Rules 1 and 2(B);
 - (2) be licensed to practice law in the United States, its territories, or the District of Columbia;
 - (3) be a member in good standing of the Bar where admitted;
 - (4) ~~intend in good faith to maintain an office in this state for the practice of law;~~
 - (5) intend to practice law in Michigan, or to be a full-time instructor in a reputable and qualified Michigan law school; and

- (65) have, after being licensed and for 3 of the 5 years preceding the application,
- (a) actively practiced law as a principal business or occupation in a jurisdiction where admitted (the practice of law under a special certificate pursuant to Rule 5[D] or as a special legal consultant pursuant to Rule 5[E] does not qualify as the practice of law required by this rule);
 - (b) been employed as a full-time instructor in a reputable and qualified law school in the United States, its districts, or its territories; or
 - (c) been on active duty (other than for training or reserve duty) in the United States armed forces as a judge advocate, legal specialist, or legal officer. The judge advocate general (or a comparable officer) or delegate must certify the assignment and the inclusive dates.

The Supreme Court may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(A)(6)(c) may be excluded when computing the 5-year period.

(B)-(E) [Unchanged.]

Staff Comment: This proposed amendment would eliminate the requirement that an applicant for admission by motion be required to express an intention to maintain an office in the state. Michigan is among a minority of states that requires that assertion, and maintaining this provision has resulted in at least one state rejecting the petition for admission of a Michigan lawyer because Michigan retains this type of requirement.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-31. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.

YOUNG, C.J. (*concurring*). The requirement that foreign attorneys seeking to practice law in Michigan must maintain a law office in Michigan is imposed by MCL 600.946. Rule 5 merely incorporates this statutory requirement into our rules so that it can easily be accessed by those petitioning to practice in this state. A member of the

State Bar of Michigan has petitioned the Court to eliminate this requirement from Rule 5.¹ However, merely revising the Rule would do nothing to remove the statutory requirement.

If the State Bar of Michigan supports the change, I encourage the bar to petition the Legislature and seek amendment of MCL 600.946. The proposed rule change can have no force or effect unless a legislative change is accomplished. I would be willing to consider support for the requested change to Rule 5, but not before the statute is amended.

¹ Significantly, the State Bar of Michigan itself has taken no formal position on the propriety of this petition to amend Rule 5. Since the bar has not formally endorsed this change, I believe publication of the proposed change is premature on this ground alone. I do not formally oppose publication because publication of a proposed amendment in no way obligates the Court to eventually approve it.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 21, 2011

Corbin R. Davis

Clerk