

Order

Michigan Supreme Court
Lansing, Michigan

October 26, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2004-08

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

Proposed Amendment of
Rule 8.126 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.126 of the Michigan Court Rules. 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 by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.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 8.126 Temporary Admission to the Bar

- (A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, ~~or~~ before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may appear and practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court or administrative tribunal or agency, and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country.

(1) Procedure.

- (a) Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court or administrative tribunal or agency an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify
- (i) the jurisdictions in which the attorney is or has been licensed or has sought licensure;
 - (ii) that the attorney is not disbarred, or suspended in any jurisdiction, and is not the subject of any pending disciplinary action, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and
 - (iii) that he or she is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions, and a copy of the acknowledgment letter supplied by the State Bar of Michigan that shows the out-of-state attorney has paid the required fee. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses of both attorneys.

- (b) The Michigan attorney shall send a copy of the motion and supporting affidavit to the Attorney Grievance Commission. Within seven days after receipt of the copy of the motion, the Attorney Grievance Commission must notify the court or administrative tribunal or agency and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. ~~The notification shall also indicate whether a fee is~~

~~due if the court or administrative tribunal or agency grants permission to appear.~~ The court or administrative tribunal or agency shall not enter an order granting permission to appear in a case until the notification is received from the Attorney Grievance Commission.

- (c) Order. Following notification by the Attorney Grievance Commission, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court or administrative tribunal or agency may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order granting permission is entered, the court shall send a copy of the order to the Michigan attorney, ~~and the out-of-state attorney, and the~~ .~~The Michigan attorney in turn shall send a copy of the order to the~~ Attorney Grievance Commission.
- (d) Fee. ~~If a fee is due, the order shall state that the appearance by the out of state attorney is effective on the date the attorney pays a~~ In each case in which an out-of-state attorney seeks temporary admission in Michigan, the attorney must pay a fee equal to the discipline and client-protection portions of a bar member's annual dues. If a fee is not due, the order shall indicate the effective date of the appearance. The attorney is required to pay the fee only once in any period between October 1 and September 30. The discipline portion of the fee shall be paid to the State Bar of Michigan for allocation to the attorney discipline system, and the client-protection portion shall be paid to the State Bar of Michigan for allocation to the Client Protection Fund. Upon payment of the fee, the out-of-state attorney will receive from the State Bar of Michigan an acknowledgment letter that the fee has been paid.
- (e) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

Staff Comment: Michigan's updated pro hac vice rule, MCR 8.126, has been in place since 2008, and several changes to the rule have been recommended. Those changes include a requirement that the fee be charged for each request for pro hac vice admission, that the court that grants the motion send a copy of the order to the AGC (instead of requiring that the Michigan attorney send the copy to the AGC), that the rule

specifically include an attorney's temporary admission for arbitration proceedings, and that the fee be required to be paid before an order enters.

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 these proposals may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2004-08. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



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.

October 26, 2010

Corbin R. Davis

Clerk