

June 27, 2008

ADM File No. 2004-08

Adoption of New Rule 8.126
of the Michigan Court Rules and
Amendments of Rule 9.108
of the Michigan Court Rules and
Rule 15 of the Rules Concerning the
State Bar of Michigan

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 9.108 of the Michigan Court Rules and Rule 15 of the Rules Concerning the State Bar of Michigan are adopted, and new Rule 8.126 of the Michigan Court Rules is adopted, effective September 1, 2008, and apply to attorneys seeking temporary admission on or after September 1, 2008.

The information generated as a result of the adoption of these rules will provide guidance to the Court when it revisits the issue within two years of the effective date of this order. The Court is interested in determining the overall incidence and geographical distribution of applications for temporary admission, and will review these rules in light of the information gathered in conformity with the application requirements contained in this proposal.

[MCR 8.126 is a new rule; amendments of existing MCR 9.108 and Rule 15 of the Rules Concerning the State Bar of Michigan are indicated in underlining and in 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 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. 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. 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 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.
- (e) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

Rule 9.108 Attorney Grievance Commission

(A) Authority of Commission. The Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys and those temporarily admitted to practice under MCR 8.126.

(B)-(D)[Unchanged.]

(E) Powers and Duties. The commission has the power and duty to:

(1)-(6) [Unchanged.]

(7) report to the Supreme Court at least quarterly regarding its activities, and to submit a joint annual report with the Attorney Discipline Board that summarizes the activities of both agencies during the past year; ~~and~~

(8) compile and maintain a list of out-of-state attorneys who have been admitted to practice temporarily and the dates those attorneys were admitted, and otherwise comply with the requirements of MCR 8.126, and

~~(8)~~(9) [Renumbered but otherwise unchanged.]

Rules Concerning the State Bar of Michigan

Rule 15. Admission to the Bar

Sec. 1 [Unchanged.]

Sec. 2 Foreign Attorney; Temporary Permission. Any person who is duly 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, may be ~~permitted to engage in the trial of a specific case in a court or before an administrative tribunal 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. Such temporary permission may be revoked by the court summarily at any time for misconduct. temporarily admitted~~ under MCR 8.126. The State Bar of Michigan shall inform the Attorney Grievance Commission when an applicant for temporary admission pays the required fee pursuant to MCR 8.126.

Sec. 3 [Unchanged.]

Staff Comment: The adoption of MCR 8.126 and the amendments of MCR 9.108 and Rule 15 of the Rules Concerning the State Bar of Michigan apply to out-of-state attorneys who seek temporary admission to the bar on or after September 1, 2008. They allow an out-of-state attorney to be authorized to appear temporarily (also known as pro hac vice appearance) in no more than five cases within a 365-day period. Because misconduct will subject the out-of-state attorney to disciplinary action in Michigan, a fee equal to the discipline and client-protection fund portions of a bar member's annual dues is imposed. The fee is required to be paid only once in each fiscal year of the State Bar of Michigan for which the attorney seeks admission. The Attorney Grievance Commission is required to keep a record of all such temporary appearances ordered by Michigan courts and administrative tribunals and agencies, and the attorney discipline

system is entitled to receipt of the discipline portion of the fee paid in applying for the temporary admission. The Client Protection Fund is entitled to receipt of the portion of the fee representing the client protection fund fee. The State Bar of Michigan will apprise the Attorney Grievance Commission of any fees paid for temporary admissions.

The Court plans to review these rules again within two years of their effective dates in light of the information gathered by the Attorney Grievance Commission.

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