

December 21, 2007

ADM File No. 2004-08

Proposed New Rule 8.126
of the Michigan Court Rules and
Proposed 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, this is to advise that the Court is considering adoption of proposed new Rule 8.126 of the Michigan Court Rules, as well as proposed amendments of Rule 9.108 of the Michigan Court Rules and Rule 15 of the Rules Concerning the State Bar of Michigan. 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 also will be considered at a public hearing held by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

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.

[MCR 8.126 is a proposed new rule; proposed revisions 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 three 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. The Michigan attorney with whom the out-of-state attorney is associated shall file an appearance and a motion that seeks permission for the appearance by the out-of-state attorney with the court or administrative tribunal or agency. The motion shall be supported by an affidavit of the out-of-state attorney seeking temporary admission, which shall verify (1) the jurisdictions in which the attorney is or has been licensed or has sought licensure; (2) that the attorney is not disbarred or suspended in any jurisdiction, and is not the subject of any pending disciplinary actions, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and (3) that he or she is familiar with the Michigan Rules of Professional Conduct. The out-of-state attorney shall attach to the affidavit a certificate of good standing from each jurisdiction in which the attorney is licensed. 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, and believes the out-of-state attorney's representations are true. The out-of-state attorney shall also sign the motion.
- (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 if 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.
- (c) Order, Fee. If the court or administrative tribunal grants permission to appear, it shall enter an order, a copy of which it must send to the Michigan attorney. The Michigan attorney in turn shall send a copy of the order to the Attorney Grievance Commission. 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 SBM member's annual dues. The fee

may be waived if the client is indigent. The fee shall be paid to the State Bar of Michigan for the exclusive use of the Attorney Grievance Commission.

- (d) 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)-(7) [Unchanged.]

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

~~(8)~~(9) perform other duties provided in these rules.

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 temporarily admitted under MCR 8.126~~permitted~~ to engage in the trial of a specific case in a court or before an administrative tribunal or agency in this ~~S~~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 or administrative tribunal or agency summarily at any time for misconduct.

Sec. 3 [Unchanged.]

Staff comment: This proposal would allow an out-of-state attorney to be authorized to appear temporarily (also known as pro hac vice appearance) in no more than three cases within a 365-day period. The rule would impose a fee equal to the discipline and client-protection fund portions of a bar member's annual dues (currently \$135) for each appearance, because misconduct will subject the out-of-state attorney to disciplinary action in Michigan. The Attorney Grievance Commission would keep a record of all such temporary appearances ordered by Michigan courts, and would be entitled to receipt of the fee paid in applying for the temporary admission.

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 April 1, 2008, 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.