

Proposed Amendments of Rules 3.925, 8.119, and 8.302 and New Rule 5.133 of the Michigan Court Rules

To read ADM File No. 2016-06, dated February 3, 2016, visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

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

On order of the Court, dated February 3, 2016, 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 8.126 and Rule 9.108 of the Michigan Court Rules and of Rule 15 of the Rules Concerning the State Bar of Michigan are adopted, effective May 1, 2016.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

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, 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 be temporarily admitted to 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, administrative tribunal or agency, or arbitrator 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 and who is not a member of the State Bar of Michigan.

(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 a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible

to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify.

(i)–(iv) [Unchanged.]

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 showing that the required fee has been paid.~~ 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 and email addresses of both attorneys.

(b) Fee. In each case in which an out-of-state attorney seeks temporary admission in Michigan, the out-of-state attorney must pay a fee equal to the discipline and client-protection portions of a bar member's annual dues. The fee must be paid electronically to the State Bar of Michigan, in conjunction with submission of an electronic copy of the motion, the certificate of good standing and the affidavit to the State Bar of Michigan, pursuant to procedures established by the State Bar of Michigan. Upon receipt of the fee remitted electronically, confirmation of payment will issue electronically to the out-of-state attorney through the State Bar of Michigan's automated process.

~~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 and fee, the Attorney Grievance Commission State Bar of Michigan must notify the court, administrative tribunal or agency, or arbitrator 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 will be issued electronically, pursuant to the procedures established by the State Bar of Michigan. No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the electronic notification is received from the Attorney Grievance Commission State Bar of Michigan.~~

The State Bar of Michigan shall retain the discipline portion of the fee for administration of the request for temporary admission and disciplinary oversight and allocate the client-protection portion to the Client Protection Fund. If a request for investigation is filed with the grievance administrator against an attorney while temporarily admitted to practice in Michigan, the entire amount of the administration fee paid by that attorney for the

case in which the allegations of misconduct arose would be transferred to the disciplinary system.

- (c) Order. Following notification by the ~~Attorney Grievance Commission~~ State Bar of Michigan, 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, administrative tribunal or agency, or arbitrator may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, ~~the court, administrative tribunal or agency, or arbitrator~~ the Michigan attorney shall submit an electronic send a copy of the order or writing to the Michigan attorney, the out-of-state attorney, and the State Bar of Michigan within seven days ~~Attorney Grievance Commission~~.
- (d) Fee. ~~In each case in which an out-of-state attorney seeks temporary admission in Michigan, a fee equal to the discipline and client protection portions of a bar member's annual dues must be paid. 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 receipt of payment of the fee, the State Bar of Michigan shall within three business days send to the out-of-state attorney an acknowledgment letter that the fee has been paid.~~
- (e)(d) [Relettered former paragraph (e) as (d), but otherwise unchanged.]

Rule 9.108 Attorney Grievance Commission

(A)–(D) [Unchanged.]

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

- (1)–(5) [Unchanged.]
- (6) submit to the Supreme Court proposed changes in these rules; and
- (7) ~~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~~
- (7)(8) [Renumbered former paragraph (8) as (7), but otherwise unchanged.]

Rule 15 Admission to the Bar

Section 1. Character and Fitness Committees. [Unchanged.]

Section 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. ~~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.~~

Section 3. Procedure for Admission; Oath of Office. [Unchanged.]

STAFF COMMENT: These rule revisions combine and transfer the ministerial functions of processing the payment and monitoring the number of cases for which an out-of-state attorney is temporarily admitted in Michigan to the State Bar of Michigan.

In addition, the Michigan attorney associated with the out-of-state attorney is required to submit a copy of the order granting permission to the out-of-state attorney to the State Bar for purposes of monitoring.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

Appointment of Chief Judge of the Trial Courts of Clinton and Gratiot Counties (Dated February 3, 2016)

On order of the Court, effective February 1, 2016, the Honorable Lisa Sullivan is appointed chief judge of the trial courts of Clinton and Gratiot Counties for a term ending December 31, 2017.

Supreme Court Appointments to the Committee on Model Civil Jury Instructions (Dated February 3, 2016)

On order of the Court, pursuant to Administrative Order No. 2001-6, the following persons are reappointed to the Committee on Model Civil Jury Instructions for terms continuing from January 1, 2016, and ending December 31, 2018:

The Honorable Douglas B. Shapiro
The Honorable Elizabeth M. Pezzetti
Benjamin J. Aloia
Daniel J. McCarthy
Donald J. Gasiorek

On further order of the Court, C. Thomas Ludden and Robert L. Avers are appointed to the committee for new terms beginning January 1, 2016, and ending December 31, 2018.

Supreme Court Appointments to the Committee on Model Criminal Jury Instructions (Dated February 3, 2016)

On order of the Court, pursuant to Administrative Order No. 2013-13, the following persons are appointed to the Committee on Model Criminal Jury Instructions for terms continuing from January 1, 2016, and ending December 31, 2018:

The Honorable Hala Y. Jarbou
The Honorable Joyce A. Draganchuk
The Honorable Alexander C. Lipsey
Paul John Cusick
Laura L. Moody
John Paul Hunt
Charles F. Justian

On further order of the Court, Michael G. Frezza is appointed to fill the remainder of a term that will end December 31, 2017.