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ADVISORY OPINION 93-005

The Committee on Unlawful Practice of the West Virginia State Bar has received an inquiry from a West Virginia attorney regarding Rule 8 of the Rules for the Admission to the Practice of Law, dealing with admissions pro hac vice. This attorney notes that he has observed law firms located outside of the State of West Virginia having an attorney admitted pro hac vice for a particular case and then allowing other attorneys from that same law firm to participate in that action, suit, or proceeding without similarly obtaining admission pro hac vice. Additionally, he states that the same practice occurs when that law firm has one or more attorneys licensed in the State of West Virginia, and then allows unlicensed members of that law firm to appear in a particular action, suit or proceeding without individually obtaining admission pro hac vice. The attorney's initial inquiry is whether or not such attorneys, not licensed in the State of West Virginia nor having obtained admission pro hac vice, are conducting the unauthorized practice of law.

The second inquiry made by this attorney is whether or not an attorney admitted pro hac vice must have a responsible local attorney present at all depositions that occur in the litigation, or whether or not that individual can appear without local counsel at depositions after having been admitted pro hac vice.

In order to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control, only duly licensed persons meeting the qualifications for admission to the bar established by the West Virginia Supreme Court are permitted to practice law in the State of West Virginia. *State ex rel Frieson v. Isner*, 285 S.E.2d 641 (W.Va. 1981), and Definition of the Practice of Law, as amended in 1961, Vol. 1, W.Va. Code at 569 through 570. The practice of law, both in court and out of court, by a person not licensed to practice is an illegal usurpation of the privilege of a duly licensed attorney at law. *West Virginia State Bar v. Early*, 109 S.E.2d 420 (W.Va. 1959). The justification for excluding from the practice of law persons who are not admitted to the bar and for limiting and restricting such practice to licensed members of the legal profession is not the protection of the members of the bar from competition or the creation of a monopoly for the members of the legal profession, but IS instead the protection of the public from being advised and represented in legal matters by unqualified and undisciplined persons for whom the judicial department of the government can exercise only slight or no control. *West Virginia State Bar v. Early*, supra.

The West Virginia Supreme Court has adopted an exception to the rule that only attorneys licensed and admitted to practice law in the State of West Virginia appear in actions, suits, proceedings, or other matters in any court of the state or before any judge, tribunal, or body of the State of West Virginia. That exception is found In Rule 8 of the Rules for Admission to the Practice Law. Rule 8, dealing with admissions pro hac vice, has In subsection (a) that: Whenever it shall appear that a person, who has not been lawfully licensed and admitted to the practice of the law in the State of West Virginia, has been duly licensed and admitted to practice before a court of record of general jurisdiction in any other state or country or in the District of Columbia, and is in good standing as a member of the bar of such jurisdiction, he may appear in a particular action, suit, proceeding or other matter in any court of this state or before any judge, tribunal or body of this state, upon full compliance with the requirements of

this Rule. Except in conformity with this Rule, members of the bar of any jurisdiction other than the State of West Virginia may not in this state do any act, or hold themselves out as entitled to do any act, within the definition of the practice of law, as prescribed by the Supreme Court of Appeals of West Virginia.

Based upon the above mandatory Rule, the Committee on Unlawful Practice is of the opinion that any attorney not lawfully licensed and admitted to the practice of law in the State of West Virginia, must first receive admission pro hac vice pursuant to Rule 8 of the Rules for Admission to the Practice of Law before that attorney may appear in any action, suit, proceeding, or other matter in any court of this state or before any judge, tribunal, or any body of this state, nor may said attorney do any act, or hold themselves out to do any act, within the definition of the practice of law as prescribed by the Supreme Court of Appeals of West Virginia until such attorney has been admitted pro hac vice.

The fact that the law firm handling any particular litigation does nor does not have an attorney licensed to practice in West Virginia, or does or does not have one or more attorneys admitted pro hac vice for any particular litigation does not relieve each and every attorney who will be participating in that action from obtaining admission pro hac vice prior to that individual appearing in any particular action, suit, or proceeding, or prior to that individual doing any act or holding themselves out as entitled to do any act, within the definition of the practice of law as prescribed by the Supreme Court of Appeals of West Virginia.

The second inquiry deals with whether or not an attorney, after being admitted pro hac vice, must be accompanied by local counsel during depositions taken in any action, suit, proceeding or other matter in any court, tribunal or body of the State of West Virginia. As a general proposition, Rule 8, admission pro hac vice, subsection (c) holds that:

Responsible Local Attorney. The applicant shall be associated with an active member in good standing of the State Bar, who shall be a responsible local attorney in the action, suit, proceedings or other matter which is the subject of the application, and service of notices and other papers upon such responsible local attorney shall be binding upon the client and upon such person. The local attorney shall attend all proceedings conducted by such tribunal or body unless released from such responsibility by appropriate order and, even if released, shall continue to be a responsible attorney in the matter in all other respects. The responsible local attorney's agreement to participate in the matter shall be evidenced by the local attorney's endorsement upon the verified statement of application or by written statement of the local attorney attached to the application.

Rule 8(c) of the Rules for the Admission to Practice of Law of the West Virginia Supreme Court was addressed in the decision of *State ex rel H. K. Porter Co. v. White*, 386 S.E.2d 25 (W.Va. 1989). In that case the West Virginia Supreme Court held that:

We would remind all parties that the mandatory language of Rule 8.0(c) requires that an out-of-state attorney admitted pro hac vice be associated with an active member in good standing of the West Virginia State Bar. The local attorney must attend all court proceedings "unless released from such responsibility by appropriate order and, even if released, shall continue to be a responsible attorney in the matter in all other respects."

Pursuant to Rule 8.0(c) and its interpretation in *State ex rel H. K. Porter Co. v. White*, supra, an attorney admitted pro hac vice must be associated with a local licensed attorney who is required to attend all proceedings conducted by the tribunal or body with the out-of-state counsel, unless specifically released from such responsibility by appropriate court order. As such, local counsel must accompany out-of-state counsel at all appearances actually

conducted before any court of this State, or before any judge, tribunal or body of the State of West Virginia. Moreover, the Committee on Unlawful Practice of the West Virginia State Bar finds that the requirement that local counsel "shall attend all proceedings conducted by such tribunal or body" also encompasses the requirement that local counsel attend and be present at all depositions that occur in any action, suit, proceeding or other matter in any court of the State of West Virginia, or before any judge, tribunal or body of the State of West Virginia. The State of West Virginia has legitimate interests to be weighed in considering pro hac vice admissions in order to maintain a high level of professional ethics, and to assure a high quality of representation in the courts of the State of West Virginia. In order to properly protect these interests and to expedite the administration of justice; courts of the State of West Virginia, and its other tribunals and bodies, are concerned with the qualifications and conduct of counsel, their availability for service of papers, and amenability to disciplinary proceedings. These same concerns' as they apply to "in court proceedings" apply equally to the presence of local counsel at depositions taken in actions, suits, proceedings, or other matters pending in the State of West Virginia. The Committee on Unlawful Practices of the West Virginia State Bar believes that Rule 8.0(c) of the Rules for the Admission to Practice of Law requires the presence of local counsel at depositions because those depositions are in effect proceedings conducted by the tribunal or body handling that particular matter . A number of policy reasons exist why local counsel must be present at such depositions. To begin with, depositions in suits, proceedings, and other matters pending before judges, tribunals, or other bodies of the State of West Virginia are occurring with increasing frequency. Quite often these depositions are used as the basis for various motions to dismiss or for summary judgment as a result of pending litigation, and are actually read and used at trial.

Furthermore, West Virginia Rule of Civil Procedure 30(c) holds that examination and cross-examination of witnesses proceed as permitted at the trial under the provisions of Rule 43(b). Consequently, depositions are taken in the same manner as testimony would be elicited before a tribunal. Additionally the West Virginia Rules of Civil Procedure do not recognize any distinction whatsoever between "discovery depositions" and "trial depositions." As such, all depositions taken in any litigation are incorporated into and become part of the proceedings held before the tribunal or body.

Additionally, the appearance of local counsel at depositions assures familiarity by the participants with the West Virginia Rules of Civil Procedure, the West Virginia Rules of Evidence, and the guidelines of professional conduct mandated in the State of West Virginia. Moreover, witnesses in the State of West Virginia are subject to compulsory process for depositions. The requirement that local counsel be present at deposition assures that there are individuals present who are familiar with the laws of West Virginia dealing with the issuance of service of process and the rules dealing with the mandatory appearances of witnesses at depositions.

The Committee on Unlawful Practice of the West Virginia State Bar therefore finds that an attorney admitted pro hac vice must be associated with an active member in good standing of the State Bar, who shall be a responsible local attorney in the action, suit, proceeding, or other matter which is the subject of the application. That local attorney shall be required to attend all proceedings conducted by such tribunal unless released from such responsibility by appropriate order of the court. If depositions are taken in any action, suit, or proceeding pending before any court of the State of West Virginia, or pending before any judge, tribunal, or body of this State, which depositions shall be taken outside of the State of West Virginia, then such local attorney shall also be present during said deposition, unless that deposition is being conducted by an attorney licensed in the state where the deposition is pending.

The Committee on Unlawful Practice of the West Virginia State Bar does not question the practice of attorneys being admitted pro hac vice in the State of West Virginia. However, the Committee would note that strict compliance with the rules dealing with admission pro hac vice is required. Admissions pro hac vice are permitted in cases in which an attorney is engaged in a highly specialized practice of law and his involvement in the litigation is limited to that area of expertise. The provisions for admissions pro hac vice were never intended to allow attorneys or law firms to circumvent the licensing procedures of the State of West Virginia and thereby conduct a generalized practice of law in this State without being licensed in West Virginia. While the admission of skilled attorneys in highly specialized practices of law may benefit the overall administration of justice in the State of West Virginia, the rules for admission pro hac vice were not designed to open the flood gates in order to allow unlicensed attorneys and law firms to train their unlicensed associates in the State of West Virginia.

Revised: 04/12/01

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