

Rule 5.5. Unauthorized practice of law. RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

A lawyer shall not:

(a) A lawyer shall not practice law in a jurisdiction where doing so violates in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates; are not services for which the forum requires pro hac vice admission; and, when performed by a foreign lawyer and requires advice on the law of this or another jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(f) Before providing any legal services set forth in paragraph (c) or (d) a lawyer must make an affirmative disclosure to the client that the lawyer is not admitted to practice in West Virginia.

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 29, 2014, the following order was made and entered:

RE: APPROVAL OF AMENDMENTS TO RULE 8 OF THE RULES FOR ADMISSION TO THE PRACTICE OF LAW IN WEST VIRGINIA

By order of April 14, 2014, the Court approved a sixty-day period of public comment on proposed amendments to Rule 8 of the Rules for Admission to the Practice of Law in West Virginia. The public comment period closed on June 13, 2014, and the Court expresses its gratitude to the members of the bar who provided comments.

Upon consideration whereof, the Court of is the opinion to and does hereby approve the following amendments to Rule 8 of the Rules for Admission to the Practice of Law in West Virginia, **effective January 1, 2015**. Additions are indicated by underlining, deletions are indicated by strikethrough.

RULES FOR ADMISSION TO THE PRACTICE OF LAW IN WEST VIRGINIA

Rule 8. Admission *pro hac vice*

(a) **General Rule.** ~~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 to be 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 or she 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, if like courtesy or privilege is extended to members of the West Virginia State Bar in such other jurisdiction. 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. A lawyer who is not a member of the West Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel *pro hac vice* in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the State of West Virginia upon compliance with this rule, if like courtesy or privilege is extended to members of the West Virginia State Bar in such other jurisdiction.~~

~~(b) Association Of Local Counsel. (c) Responsible local attorney. The applicant shall be associated with an active member in good standing of the state bar, having an office for the transaction of business within the State of West Virginia, who shall be a responsible local attorney~~

in the action, suit, proceeding 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. No out-of-state lawyer may appear *pro hac vice* before any tribunal in West Virginia unless the out-of-state lawyer has first associated in that case with a lawyer — or other lawyers in the same law firm who have previously made an appearance in the case — who are active members in good standing of the West Virginia State Bar (hereinafter called “local counsel”), who maintain an actual physical office equipped to conduct the practice of law in the State of West Virginia, which office is the primary location from which local counsel practice law on a daily basis. The local attorney shall be required to sign all pleadings and affix the attorney's West Virginia State Bar ID number thereto, to attend all hearings, trials or proceedings actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission *pro hac vice*. The name and West Virginia Bar ID number of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. The local attorney shall further attend the taking of depositions and other actions that occur in the proceedings which are not actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission *pro hac vice*, and shall be a responsible attorney in the matter in all other respects. Local counsel shall further attend the taking of depositions and other events that occur in the proceedings that are not actually conducted before the judge, tribunal or other body of the State of West Virginia, unless the presiding judge permits local counsel to appear by telephone or other electronic means. Local counsel associating with an out-of-state lawyer in a particular case shall accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal in that particular case. In order to be a “responsible local attorney” the local attorney must maintain an actual physical office equipped to conduct the practice of law in the State of West Virginia, which office is the primary location from which the “responsible local attorney” practices law on a daily basis. 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. Any pleading or other paper required to be served (whether relating to discovery or otherwise) shall be invalid unless it is physically or electronically signed by local counsel. The tribunal in which such case is pending shall have full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel shall be deemed valid as if served on the out-of-state lawyer.

(c) Procedure For Applying. ~~(b) Admission process.~~ Before such privilege of appearance is granted, the applicant shall provide to the judge, tribunal or other body before which the applicant desires to appear, as well as to The West Virginia State Bar, a verified statement of application for *pro hac vice* admission listing Appearance *pro hac vice* in a case is subject to the

discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear *pro hac vice* under this rule shall comply with the procedures set forth herein for each case in which *pro hac vice* status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear *pro hac vice* on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal shall specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary *pro hac vice* admission shall be revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.

In order to appear *pro hac vice* as counsel in any matter pending before a tribunal in the State of West Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal — and The West Virginia State Bar — a verified application listing (1) the action, suit, proceeding or other matter which is the subject of the application; (2) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or of the country in which such person is admitted, and the out-of-state lawyer's unique bar registration number for each jurisdiction in which the out-of-state lawyer is admitted; (3) the name and address of the member of The West Virginia State Bar who will be a ~~responsible local attorney~~ local counsel in the matter; (4) all matters before West Virginia tribunals or bodies in which such person is or has been involved in the preceding 24 months, including all matters in which the applicant has practiced on a temporary basis under Rule 5.5 of the Rules of Professional Conduct; (5) all matters before West Virginia tribunals or bodies in which any member of the petitioner's firm, partnership, corporation or other operating entity is or has been involved in the preceding 24 months; (6) a representation by the applicant for each State, the District of Columbia or any other country where said applicant has been admitted to practice, stating whether the applicant is in good standing with the bar of every such jurisdiction and that he or she has not been disciplined in any such jurisdiction within the preceding 24 months; (7) an agreement to comply with all laws, rules and regulations of West Virginia state and local governments, where applicable, including taxing authorities and any standards for pro bono civil and criminal indigent defense legal services; (8) local counsel's agreement to participate in the matter 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; (9) a non-refundable application fee of three hundred-fifty dollars (\$350.00) payable to the West Virginia State Bar for each individual applicant in each individual *pro hac vice* admission for each separate case before a tribunal. The application fee shall accompany the verified statement of application for *pro hac vice* admission which that is sent to The West Virginia State Bar, and the applicant's motion for *pro hac vice* admission shall include a verified statement that the application fee of three-hundred fifty dollars (\$350) has been paid to The West Virginia State Bar. Separate *pro hac vice* admission shall be required in every case and every tribunal in which the applicant seeks to act as counsel. For purposes of this rule, each civil action with a case number shall constitute a single case. Separate

pro hac vice admission is required for each case where there is a complaint with more than one plaintiff and each plaintiff is assigned a separate civil action number. See State ex rel. J.C. v. Mazzone, 233 W.Va. 457, 759 S.E. 2d 200 (2014). The West Virginia State Bar has authority to promulgate a mandatory form for use in making the verified application required by this rule.

(d) Grounds for denial. If a complete and truthful statement of application ~~be~~ is not filed, or if inquiry by the ~~court~~ tribunal concerning the applicant's admission and ethics in another jurisdiction indicates, or if the applicant's appearances within the State of West Virginia within the past 24 months — including temporary practice under Rule 5.5 of the Rules of Professional Conduct — are numerous or frequent or involve improper conduct, the ~~court or tribunal shall~~ may deny such person the continuing privilege of appearance.

(e) Annual Fee. Out-of-state lawyers admitted *pro hac vice* for one year or more in one or more cases must pay an annual fee of three-hundred fifty dollars (\$350) in addition to the application fee required in Rule 8(c). The annual fee is charged per lawyer, not per case. The West Virginia State Bar will provide an annual statement of fees due to each out-of-state attorney after the initial application fee required in Rule 8(c) is submitted. Failure to pay the annual fee within thirty days of the due date in any annual statement will result in termination of the *pro hac vice* admission.

(f) Transfer Of Venue And Appeal. The out-of-state lawyer's *pro hac vice* admission shall be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal; provided, however, that the tribunal having jurisdiction over such transferred case shall have the discretion to revoke the authority of the out-of-state lawyer to appear *pro hac vice*. If the case or proceeding is appealed to the Supreme Court of Appeals of West Virginia or an extraordinary proceeding is brought in the Supreme Court of Appeals of West Virginia, the out-of-state lawyer's *pro hac vice* admission shall not be deemed to continue in that tribunal, and the out-of-state lawyer must make a separate application for admission *pro hac vice* before the Supreme Court of Appeals.

(g) Duty To Report Status. An out-of-state lawyer admitted *pro hac vice* has a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal shall advise The West Virginia State Bar if the tribunal denies or revokes the out-of-state lawyer's permission to appear *pro hac vice*.

(h) Record-Keeping. The West Virginia State Bar will maintain an electronic database necessary for the administration and enforcement of this rule, and may require transactions under this rule to be completed electronically.

(i) Disciplinary Jurisdiction Of The West Virginia State Bar. An out-of-state lawyer admitted *pro hac vice* pursuant to this rule shall be subject to the jurisdiction of all tribunals and agencies of the State of West Virginia, and The West Virginia State Bar, with respect to the laws and rules of West Virginia governing the conduct and discipline of out-of-state lawyers to the same extent as an active member of The West Virginia State Bar. An applicant or out-of-state

lawyer admitted pro hac vice may be disciplined in the same manner as a member of The West Virginia State Bar.

(j) Non-Compliant Filings. It shall be the duty of every circuit clerk to reject any pleading or other document tendered for filing in the office of said clerk which is not signed or otherwise executed as required by this rule. Any document filed in violation of this rule may be expunged as a fugitive document; provided, however, that any party shall have a period of thirty days after notice to comply with this rule by filing a certification with the circuit clerk signed by ~~the responsible local attorney~~ local counsel and identifying the pleadings and documents thereby affected. ~~(e) Effect of Denial.~~ Any pleading filed by a visiting attorney without complying with this section may, after 14 days' written notice mailed to him or her at the address then known to the Clerk of the Circuit Court or other tribunal or body, be stricken from the record.

(k) In-State Services Related to Out-of-State Proceedings. Subject to the requirements and limitations of Rule 5.5 of the West Virginia Rules of Professional Conduct, an out-of-state lawyer may provide the following services without the entry of a *pro hac vice* order:

(1) In connection with a proceeding pending outside of West Virginia, an out-of-state lawyer admitted to appear in that proceeding may render legal services in West Virginia pertaining to or in aid of such proceeding.

(2) In connection with a case in which an out-of-state lawyer reasonably believes he is eligible for admission *pro hac vice* under this rule: (a) the out-of-state lawyer may consult in West Virginia with a member of The West Virginia State Bar concerning a pending or potential proceeding in West Virginia; (b) the out-of-state lawyer may, at the request of a person in West Virginia contemplating or involved in a proceeding in West Virginia, consult with that person about that person's retention of the out-of-state lawyer in connection with that proceeding; and (c) on behalf of a client residing in West Virginia or elsewhere, the out-of-state lawyer may render legal services in West Virginia in preparation for a potential case to be filed in West Virginia.

(3) An out-of-state lawyer may render legal services to prepare for and participate in an alternative dispute resolution process, including arbitration, mediation, or other dispute-resolution system involving a third-party neutral, regardless of where the alternative dispute resolution process or proceeding is expected to take place or actually takes place.

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court

