

FILED

November 24, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

**ORDER PROMULGATING AMENDMENTS TO
RULE 5 OF THE GENERAL RULES OF PRACTICE**

The Legal Services Advisory Committee (LSAC) filed a petition on January 13, 2020, proposing amendments to Rule 5 of the General Rules of Practice. Specifically, LSAC's petition asks that we amend Rule 5 by imposing a fee on attorneys who seek pro hac vice admission to appear in Minnesota state courts and establishing a registration process for such admissions. The petition explains that a fee on pro hac vice admissions would provide financial resources to support civil legal aid programs, and the registration process would provide an administrative framework for monitoring those admissions.

We referred LSAC's petition to the Advisory Committee on the General Rules of Practice, which recommended amendments to Rule 5 to establish an application process with the State Board of Law Examiners, accompanied by a fee, followed by a motion made to the district court before which the out-of-state lawyer seeks to appear. We opened a public comment period on LSAC's petition and the advisory committee's recommended amendments to Rule 5 of the General Rules of Practice. We also held a public hearing, on September 15, 2020. No objections were received to LSAC's petition or the proposed rule amendments.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of the Legal Services Advisory Committee is granted. Rule 5 of the General Rules of Practice for the District Courts is amended as shown in the attachment to this order. The amendments to Rule 5 are effective as of June 1, 2021, and apply to all actions pending on the effective date and all motions for pro hac vice admission filed under Rule 5 on or after the effective date. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: November 24, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS

[*Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.*]

TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

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RULE 5: APPEARANCE BY OUT-OF-STATE LAWYERS

5.01 Eligibility.

(a) Who is Eligible. Lawyers duly admitted to practice in the trial courts of any other jurisdiction ~~who have been retained to appear in a particular case pending in a district court of this state may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice* appear in any of the courts of this state provided:~~

(1) the out-of-state lawyer certifies to the satisfaction of the Minnesota Board of Law Examiners the lawyer's good standing in the jurisdiction in which the lawyer is admitted and that the lawyer is not suspended or disbarred in any jurisdiction for reasons of discipline or disability in lieu of discipline;

(2) the out-of-state lawyer pays a non-refundable fee of \$450 to the Minnesota Board of Law Examiners;

(~~3~~) the pleadings and other documents in the case are also signed by a lawyer who is and remains duly admitted to practice in the State of Minnesota; and

(~~4~~) such lawyer admitted in Minnesota;

(i) accepts service of all papers, and

(ii) is ~~also~~ present before the court, in chambers or in the courtroom or participates by permitted remote means ~~telephone~~ in any hearing conducted by remote means ~~telephone~~.

In a subsequent appearance in the same action the out-of-state lawyer may, in the discretion of the court, conduct the proceedings without the presence of Minnesota counsel.

(b) When Required; Urgent Matter. *Pro hac vice* admission under this rule is required for any lawyer either arguing before the court in an action or signing pleadings or other documents in an action. The court may allow a non-admitted lawyer to argue or submit an urgent matter upon the lawyer's representation to the court that the lawyer qualifies for admission under this rule and that an application for *pro hac vice* admission will be promptly submitted.

5.02 Exceptions.

(a) Other Rules. Rule 5 shall not apply if another rule expressly exempts a case or proceeding from requiring *pro hac vice* admission. These rules include, without limitation, Rule 3.06 of the Rules of Juvenile Protection Procedure (attorneys representing Indian tribes in juvenile protection cases), Rule 3.09 of the Rules of Adoption Procedure (attorneys representing Indian

tribes in adoption cases), and Rule 45.06(b) of the Rules of Civil Procedure (application for a subpoena for use in an action pending outside Minnesota).

(b) Fee Waiver.

(1) Pro Bono Representation. A lawyer who represents a person with limited means and will not charge an attorney fee in the case or seek or receive attorney fee reimbursement in the case in which the lawyer seeks admission *pro hac vice* shall not be required to pay the fee set forth in Rule 5.01(a)(2).

(2) Public Attorney. A lawyer who is representing a federal, state, or local government entity shall not be required to pay the fee set forth in Rule 5.01(a)(2).

(3) Other Fee Waivers Prohibited. No other requests to waive the *pro hac vice* fee shall be made to or granted by the Board of Law Examiners, including for related cases that involve one or more common questions of fact or law.

5.03 Application to Minnesota Board of Law Examiners.

The application to the Minnesota Board of Law Examiners shall be submitted electronically, shall be accompanied by the fee in Rule 5.01(a)(2) unless waived as provided in Rule 5.02(b), shall include a certificate of good standing from the attorney licensing authority in the jurisdiction in which the applicant is admitted, and shall include any other information requested by the Minnesota Board of Law Examiners.

5.04 Motion to Court.

(a) Requirements. An active member in good standing of the bar of this state who is attorney of record for the client(s) whom the applicant proposes to represent, must move the applicant's admission in the action. The motion shall be served on all parties to the action and must be accompanied by:

(1) an affidavit or declaration of the applicant stating whether the applicant has applied for *pro hac vice* admission in Minnesota in the preceding two years, and for each such application, the caption, venue, and file number of the case and whether admission was allowed; and

(2) a copy of the application submitted under Rule 5.03 along with a copy of the notice from the Board of Law Examiners confirming good standing.

(b) Withdrawal of Local Counsel. If the moving attorney is suspended, disbarred, or ceases to be an attorney of record for such client(s) after admission *pro hac vice* has been granted, another Minnesota lawyer must be promptly substituted and file a notice of appearance in the action.

(c) Fee. The motion shall be accompanied by the appropriate motion fee, if any.

(d) Standard. After confirmation of good standing by the Board of Law Examiners, the court shall promptly consider the motion for admission *pro hac vice*. Discretion shall be liberally exercised to grant motions for admission *pro hac vice*.

(e) Revocation. Admission to appear as counsel *pro hac vice* in a suit may be revoked for conduct violating any applicable rules, or conduct justifying sanctions under the court's inherent power.

5.05 Subject to Minnesota Rules and Jurisdiction.

The out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing and the registration requirements for e-filing in Rule 14.02(a) of the General Rules of Practice for the District Court. To the extent that electronic service on the out-of-state lawyer under rule 14 is unavailable, service of documents on the lawyer admitted to the bar of this state and who appears as counsel of record with the out-of-state lawyer shall constitute notice to and service on the party.

Any lawyer appearing pursuant to this rule is subject to the disciplinary rules and regulations governing Minnesota lawyers, including the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility, and by applying to appear or appearing in any action is subject to the jurisdiction of the Minnesota courts.

Advisory Committee Comment—2020 Amendment

Rule 5 is substantially revised to provide greater guidance to the trial courts and counsel for the consideration of the admission of *pro hac vice* counsel. The rule is substantially consistent with the earlier version of the rule, but is expanded and the standards for admission as well as the process for obtaining leave to participate as *pro hac vice* counsel is established in greater detail.

This comment is intended to be comprehensive in scope and essentially incorporates the portions of the earlier advisory committee comments to the extent they are still applicable. The earlier comments are retained for any historic value they may have.

Rule 5.01 sets forth the requirements for admission *pro hac vice*. The threshold requirements are that 1) the lawyer to be admitted must be a lawyer in good standing in the jurisdiction where the lawyer primarily practices; 2) the lawyer is not suspended or disbarred in any jurisdiction; and 3) the lawyer pays a \$450 fee to the Minnesota Board of Law Examiners. The application to the board may be made without notice to other parties in any pending or proposed action. The subsequent motion to the court must be made with notice to all parties to the action. See Rule 5.

The determination that these three requirements are satisfied is delegated to the Board of Law Examiners. The application process is established in Rule 5.03.

The amended Rule 5.01(b) establishes precisely when *pro hac vice* admission is required: whenever a non-admitted lawyer either appears in a proceeding to argue before the court or is the lawyer signing any pleading or other document in the case. This standard is consistent with the definition of when *pro hac vice* admission is required by the appellate courts under Minn. R. Civ. App. P. 143.05, subd. 1. Rule 5.01(b) is intended to establish a bright-line standard. Non-admitted lawyers who merely attend hearings, trial, or other proceedings in a non-speaking role are not required to be admitted *pro hac vice*. Similarly, mere appearance in the signature block of pleadings or other documents does not require admission.

The rule contemplates that the application for and approval of *pro hac vice* admission must be completed before the lawyer may argue or sign pleadings in a Minnesota action. Rule 5.01(b)

recognizes, however, that judges have the inherent discretion to allow a non-admitted lawyer to appear on shorter notice when exigent circumstances are present. This rule does not allow an extended or routine exception to the “apply first, then appear” rule and is intended to apply only when unusual urgency exists, such as at the inception of an action where time is short or where temporary injunctive relief is sought. The court then relies on the Minnesota attorney’s and proposed *pro hac vice* counsel’s representations that the criteria for admission are present and that the complete application and motion will be promptly filed.

Pro hac vice admission under Rule 5 is intended to be an isolated or occasional event.

Rule 5.02 contains exceptions to its requirements generally as well as exceptions to the requirement that an application fee be paid. Rule 5.02(a) recognizes that other rules specifically exempt non-admitted lawyers from being required to be admitted in Minnesota or even to commence an action in the Minnesota courts as provided in Minn. R. Civ. P. 45.06(b). Rule 5.02(b) identifies the only two circumstances that will allow payment of the fee to be waived: for out-of-state lawyers handling a pro bono case and lawyers representing a governmental entity. The rule provides a specific definition of what pro bono means—the lawyer must represent a client of limited means and must do so without expectation of recovering a fee from any source, including the client or under any fee-shifting statute or rule. The fee waiver for representation of a governmental entity applies to federal, state, or local governments or other political subdivisions or agencies.

Rule 5 is intended to require an attorney appearing in a case to pay the application fee once in the case. *Pro hac vice* admission will typically last for the duration of the case in the district court; separate application to the appellate courts must be made to appear *pro hac vice* on appeal under the Rules of Civil Appellate Procedure.

Rule 5.03 sets forth the requirements for submitting the application to the Minnesota Board of Law Examiners. The application must be verified in the manner required by the Board of Law Examiners. The rule requires certification of good standing from the single jurisdiction where the lawyer primarily practices but requires disclosure of any suspension or disbarment in any jurisdiction. The rule enumerates information required in every application, but also provides for the requirement of additional information if requested by the Board of Law Examiners.

The actual motion for admission *pro hac vice* is made by an active member of the Minnesota Bar. That lawyer must have appeared in the case and be representing the same client or clients. The motion must be served on all parties and be accompanied by an affidavit from the lawyer to be admitted setting forth the particular detailed information for the court. Rule 5.04(c) defines the standard for deciding the application for admission. It recognizes that admission should be liberally granted.

Rule 5.04(b) recognizes that a motion filing fee may be required by statute. *See* Minn. Stat. § 357.021, subd. 2(4). Although documents can be rejected for filing under R. Civ. P. 5.04(c) only for limited reasons, failure to tender a required filing fee is one such reason.

Rule 5.04(d) underscores that appearance *pro hac vice* is inherently allowed in the discretion of the court, and is subject to revocation. This is an important and practical sanction. Rule 5.05 makes it clear that *pro hac vice* lawyers are required to adhere to the Minnesota Rules of Professional Conduct and any other rules governing the conduct of Minnesota lawyers.

Rule 5.05 also contains an important provision regarding service on *pro hac vice* counsel. Simply put, they are required under Rule 14 of the General Rules of Practice to register for e-filing and must designate an email address for service of documents upon them in each case. If they fail to do so or service cannot be accomplished via that registered address, they are deemed served by service on the Minnesota lawyer who moved their admission. This provision eliminates any need to serve *pro hac vice* counsel by mail or means other than using the court's e-filing and e-service system.

Rule 5.05 requires that a lawyer admitted *pro hac vice* to register for use of the court's e-filing and e-service system. Additionally, the rule makes it unnecessary in that circumstance for other parties to serve the *pro hac vice* lawyer by other means. Thus, the involvement of *pro hac vice* counsel should not increase the burden on other parties to accomplish service.