

PRO HAC VICE ADMISSIONS IN MICHIGAN ARBITRATIONS

By: Richard A. Hooker, Varnum LLP
ASC Panel Neutral

On April 5, 2011, the Michigan Supreme Court issued an Order that Michigan Court Rule 8.126 be amended effective September 1, 2011 to require lawyers from other jurisdictions to seek and obtain temporary admission to practice in arbitrations held in Michigan. The essential features of the amended rule are:

- A Michigan lawyer associated with an out-of-state attorney appearing in the arbitration matter must make a motion for temporary admission of the out-of-state attorney to the arbitrator. Granting or denying the motion remains within the discretion of the arbitrator;
- The motion for temporary admission must include a current certificate of good standing issued by the jurisdiction in which the out-of-state attorney is licensed and eligible to practice, copies of any disciplinary dispositions regarding the attorney, and an acknowledgement letter from the State Bar of Michigan indicating the required fee for temporary admission has been paid;
- The motion must also be supported by an affidavit verifying i) the jurisdictions in which the out-of-state attorney is licensed, has been licensed or has sought licensure, ii) the jurisdiction where the attorney is presently licensed, iii) the attorney is not disbarred, suspended or subject to pending disciplinary proceedings, and iv) the attorney is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules and Michigan Rules of Evidence;
- The Michigan attorney must send a copy of the Motion to the Attorney Grievance Commission, which must then act within seven (7) days to notify the arbitrator whether the out-of-state attorney has been granted temporary admission within the previous one-year period and, if so, how many times; and
- The out-of-state attorney may appear in no more than 5 cases in any 365-day period.

That this amended rule is designed to deal with arbitrations conducted under Michigan law is no surprise; nor is the requirement of *pro hac vice* admission under such circumstances terribly radical. The Rule, however, leaves practitioners and arbitrators with important unanswered questions, including:

- What about arbitrations that occur in Michigan, but are governed entirely by federal law, most particularly labor arbitrations pursuant to collectively bargained agreements? There is no exception made in the Amended Rule; nor is there even a requirement in the Rule that the particular matter involve application of Michigan law.

- What about non-attorney advocates who frequently appear before arbitrators and arbitration tribunals due to their specialized expertise in specific fields? Are they now automatically engaged in the Unauthorized Practice of Law simply because the arbitration takes place within Michigan?
- If the arbitrator simply ignores the Rule's requirements and allows the out-of-state attorney to appear without satisfaction of those requirements, is the arbitrator subject to disciplinary action of any kind? Is the subsequent Award valid? Is that Award subject to attack by the non-prevailing party for the arbitrator's failure to exact compliance?
- If the arbitrator selected by the parties denies the motion for temporary admission, is the parties' obligation to arbitrate their dispute still enforceable?

To date, there has been no clarification forthcoming from the Supreme Court on such questions, so practitioners and arbitrators may be forced to accept the risks attendant to waiting for actual decisions by the State Bar and the Attorney Grievance Commission.

Dick Hooker is a Partner with Varnum, LLP located in Novi, Michigan. His practice areas consist of: Labor and Employment Law; Civil Rights Law; and Employment Relations Matters. He is an active mediator and arbitrator with American Settlement Centers, Inc. of Farmington Hills, Michigan. He may be contacted at 248-865-3904.