

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF CIVIL PROCEDURE

2021 Me. Rules 01

Effective: January 22, 2021

All of the Justices concurring therein, the following amendment to the Maine Rules of Civil Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in the understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 89(c) of the Maine Rules of Civil Procedure is amended to read as follows:

(c) Attorneys Practicing With Legal Services Organizations. Any member in good standing of the Bar of any other state or of the District of Columbia who becomes employed by or engages in pro bono services as a volunteer with a legal services organization based in this State that is funded from state, federal or recognized charitable sources and provides legal assistance to indigents in civil matters, may be permitted to practice before the courts of this State subject to the provisions of this Rule. Attorneys permitted to practice under this Rule are not, and shall not represent themselves to be, members of the bar of this State, and shall not practice law in Maine outside of the scope of the attorney's employment or voluntary pro bono service with a legal services organization based in Maine. Practice under this Rule shall be subject to the following conditions:

(1) An application for temporary permission to practice law in this State under the provisions of this Rule shall be filed with the Clerk of the Law Court, and shall be accompanied by:

(A) a certificate of the highest court of another state certifying that the attorney is a member in good standing in the bar of that court; and

(B) a statement signed by the executive director or chief executive officer of the legal services organization that the attorney (i) is currently employed by or volunteering with the organization, and (ii) has expressly agreed not to practice law in Maine outside of the scope of the attorney's employment or voluntary pro bono service with the legal services organization.

(2) An attorney is permitted to practice subject to the provisions of this rule on the date that the application for temporary permission to practice law is approved by a single justice of the Supreme Judicial Court. An attorney's permission to practice subject to the provisions of this Rule shall be effective only when a copy of the Court's approval is filed with the Board of Overseers of the Bar and shall remain in effect for the time specified in the application, but not to exceed two years from the date the application is approved, except that an attorney who has provided, and will be providing, voluntary pro bono service only with a legal services organization, and who is not, and will not be, an employee of a legal services organization, may re-apply for temporary permission to practice at any time, subject to all other provisions of this rule.

(3) Permission to practice under this Rule shall terminate whenever the attorney ceases to be employed by or volunteer with the legal services organization. When an attorney permitted to practice under this Rule ceases to be so employed or engaged as a volunteer, the attorney shall file a statement to that effect with the Clerk of the Law Court and the Board of Overseers of the Bar.

(4) An attorney permitted to practice temporarily under this Rule shall perform no legal services within the State except for clients aided by the legal services organization by which the attorney is employed and for such purposes only, and the attorney shall not accept any compensation for such services, except such salary as may be paid by the legal services organization, or by a governmental body or charitable institution to enable the attorney to work for the legal services organization.

(5) All pleadings signed by an attorney permitted to practice under this Rule shall bear the name and office address, and be signed on behalf of, an attorney supervisor of the organized legal services organization concerned, who shall be an attorney fully licensed to engage in the general practice of law within this State.

(6) Attorneys permitted to practice temporarily under this Rule are subject to the Maine Bar Rules and may be disciplined or suspended from practice in the manner now or hereafter provided by rule for the discipline or suspension of attorneys generally.

Advisory Note – January 2021

Pursuant to Maine Bar Rule 4(f), attorneys licensed in Maine who elect inactive status because they have retired or otherwise stopped practicing law may apply for Emeritus status and thereby provide pro bono legal services in affiliation with one or more approved legal services organizations. While Emeritus status is an excellent option for inactive Maine attorneys, there presently exists no comparable pathway for an attorney licensed but inactive in another state to provide pro bono services in Maine without first becoming licensed to practice law in Maine. Legal services organizations, including the Volunteer Lawyers Project, report regularly receiving inquiries from attorneys licensed in other states who have retired or moved to Maine, who do not actively practice law for a living, but who wish to volunteer their time. These inquiries have increased in recent months in light of increased relocations to Maine during the pandemic. These inquiring attorneys do not wish to take the Maine bar exam or to apply for admission to the Maine bar by motion, but are eager to volunteer their time in affiliation with Maine legal services organizations.

Rule 89(c) of the Maine Rules of Civil Procedure currently provides a pathway for an attorney “in good standing of the Bar of any other state or the District of Columbia” to practice law in Maine in connection with employment by a legal services organization. By its plain terms, Rule 89(c) presently applies only in the context of employment by a legal services organization. Rule 89(c) contains several safeguards, including a requirement that the attorney submit an application for temporary permission to practice in Maine, together with (1) a certificate of the highest court of another state in which the attorney practices, certifying that the attorney is a member in good standing in the bar of that court; and (2) a statement signed by the legal services organization, confirming that the attorney is currently employed by the organization and has agreed not to practice law in Maine outside the scope of their employment. Rule 89(c) further provides that such temporary permission to practice law in Maine in connection with employment by a legal services organization is

effective when approved by a single justice of the Supreme Judicial Court and cannot exceed a period of two years.

Thus, Rule 89(c) sets forth a framework for an attorney in good standing in another state or the District of Columbia to practice temporarily in Maine, without becoming a member of the Maine Bar. The Justice Action Group's pro bono committee has proposed that Rule 89(c) be expanded to cover not only out-of-state attorneys who become employed by legal services organizations in Maine, but also out-of-state attorneys who wish to volunteer with such legal services organization and provide pro bono legal services in Maine. The Bar's interests in ensuring that such volunteers are fit to practice law and adequately supervised by a legal services organization are the same whether the attorney is employed by or volunteering for such an organization. Moreover, the mechanisms for ensuring fitness and oversight contained in the existing Rule 89(c) are appropriate and sufficient, whether the lawyer is an employee of or volunteering with a legal services organization.

There is only one area in which the proposed amendment to Rule 89(c) suggests different treatment of employed attorneys and attorneys who provide pro bono services. As noted, Rule 89(c)(2) places a two-year limit on any temporary permission to practice law in Maine that is extended to an attorney licensed in another state. A temporal limitation like this makes sense in the context of attorneys who are employed by legal services organizations. In this context, the limitation reflects a practical concern that attorneys who intend to make a living practicing law in Maine for an extended period of time ought to be members of the Maine Bar.

Attorney volunteers, on the other hand, will presumably volunteer on a less than full time basis and will receive no benefit or compensation for their services. We expect that attorney volunteers licensed in other states and seeking permission to provide pro bono services in Maine will primarily consist of individuals who have retired from the active practice of law in another state or who have otherwise stopped practicing law and have moved to or are now spending a significant amount of time in Maine. The same considerations that counsel in favor of placing a temporal limit on attorney employees do not apply to volunteers. For this reason, we have proposed language that would permit an attorney providing pro bono services only with a legal services organization to re-apply for temporary permission to practice in Maine at any time, as long as they remain in compliance with the rule.

Dated: January 22, 2021

FOR THE COURT,*

_____/s/_____
ANDREW M. MEAD
Acting Chief Justice

ELLEN A. GORMAN
JOSEPH M. JABAR
THOMAS E. HUMPHREY
ANDREW M. HORTON
CATHERINE R. CONNORS
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.