RULE 89. WITHDRAWAL OF ATTORNEYS; VISITING LAWYERS; TEMPORARY PRACTICE WITH LEGAL SERVICES ORGANIZATIONS

(a) Withdrawal of Attorneys. An attorney may withdraw from a case in which the attorney appears as sole counsel for a client, by serving notice of withdrawal on the client and all other parties and filing the notice, provided that (1) such notice is accompanied by notice of the appearance of other counsel, (2) there are no motions pending before the court, and (3) no trial date has been set. Unless these conditions are met, the attorney may withdraw from the case only by leave of court. A motion for leave to withdraw shall state the last known address of the client and shall be served on the client in accordance with Rule 5. This subdivision shall not apply to a limited appearance filed under Rule 11(b) unless the attorney seeks to withdraw from the limited appearance itself.

(b) Visiting Attorneys. Any member in good standing of the bar of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with the out-of-state attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court. Visiting attorneys shall not be permitted to file limited appearances.

Advisory Note – September 2024

Rule 89(c) is repealed and its contents relocated to new Maine Bar Admission Rule 11C, where the contents of the rule have been changed, as indicated in the Advisory Note to that rule, to "add provisions authorizing temporary permission to practice for an attorney who is a member in good standing of the Bar of any other state or of the District of Columbia if that attorney is employed by the Maine Commission on Public Defense Services and has completed the Commission's minimum standard training" and to "properly identify the Executive Clerk of the Supreme Judicial Court, rather than the Clerk of the Law Court, as the person who will accept filings."

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.

Advisory Note – July 2008

This amendment removes the "full time" employment restriction from Rule 89(c). It would allow any attorney employed by a legal services

organization as defined in the Rule to be admitted to practice, representing only the legal services organization and its clients, for a period of up to two years without being admitted to the Maine Bar. The two-year restriction and a requirement that any application be approved by a single justice of the Supreme Judicial Court are stated in paragraph 2 of the current Rule 89(c). The temporary permission to practice is subject to the other terms and conditions specified in the Rule.

Advisory Notes
April, 2005

Since attorneys permitted to practice are subject to Rule 89, this amendment is to provide for notice to the Board of Overseers of the Bar when an attorney is granted temporary permission to practice and when such attorney ceases to practice.

Advisory Notes
July 2003

M.R. Civ. P. 89(c) is adopted to address situations where attorneys licensed in other states may apply for short-term fellowships or grants to fund their work with legal services organizations in Maine. Sometimes it is difficult for such applicants to consider a temporary position which requires them to pass another bar exam. To allow consideration of qualified applicants for these short-term, full-time positions, and to allow the clients of legal services organizations to benefit from the expertise of these lawyers committed to public service, Rule 89(c) is adopted to permit, for no more than two years, practice by such attorneys employed on a full-time basis and supervised by the organizations.

The rule allowing up to two years limited practice for individuals working for legal services organizations on fellowships or grants is subject to strict limitations. Such attorneys could not represent themselves to be members of the Bar of the State.

Applications would have to be filed with the Clerk of the Law Court, accompanied by a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that court, plus a statement signed by the executive director or chief executive officer of the

legal services organization that the attorney is currently employed on a full-time basis by the organization. Employed on a full-time basis is defined as employment performing services for the employer or clients of the employer for at least 35 hours in an average work week.

Applications are subject to approval by a single Justice of the Supreme Judicial Court. The permission to practice remains in effect for the time specified in the application, but not to exceed two years from the date the application is approved by a single Justice of the Supreme Judicial Court.

The permission to practice granted by the rule terminates whenever the attorney ceases to be employed on a full-time basis by the employing legal services organization. At such time, the legal services organization must file a statement to that effect with the Clerk of the Law Court.

Attorneys practicing under this rule are not permitted to provide any other legal services within the State except for clients aided by the legal services organization employing the attorney, and the attorney can accept no compensation for such services except the salary paid by the legal services organization or another entity paying the salary to enable the attorney to work for the legal services organization.

Pleadings signed by an attorney permitted to practice under the rule must also bear the name and office address and be signed on behalf of an attorney-supervisor of the organized legal services organization concerned. That attorney-supervisor must be fully licensed to engage in practice within the State of Maine. It should be noted that the attorney-supervisor does not have to sign, the attorney permitted to practice may sign on behalf of the attorney supervisor. However, the attorney-supervisor is considered to be an attorney appearing in the case should the matter continue after the services of the attorney permitted to practice under the rule are terminated.

Attorneys permitted to practice under the rule are subject to all the disciplinary provisions of the Maine Bar Rules.

Several other states already permit the limited practice of such attorneys. *See, e.g.*, Rule 40, Arizona Rules of Court (Authorization to Practice Law For Attorneys Working Full-Time for Approved Legal Services Organizations); Rule IX, Supreme Court Rules for the Government of the Bar of

Ohio (Temporary Certification for Practice in Legal Services, Public Defender, and Law School Programs); Rule 2.111, Rules of the Supreme Court of Kentucky (Limited Certificate of Admission to Practice Law); Rule 49.3, Nevada Supreme Court Rules (Limited Practice for Certain Attorneys); Rule 1:21-3, New Jersey Rules of Court (Appearance by Law Graduates and Students; Special Permission for Out-of-State Attorneys); Rule 8(c), Washington Rules of Court (Exception for Indigent Representation).

Advisory Committee's Note
July 1, 2001

The Court has amended the Maine Bar Rules and Rules 5, 11 and 89 of the Maine Rules of Civil Procedure to permit attorneys to assist an otherwise unrepresented litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Maine courts.

A limited appearance is filed under Rule 11 (b). The last sentence in Rule 89(b) is added to provide that visiting lawyers may not file limited appearances. Rule 89 (a) is amended to add a new last sentence making the conditions for withdrawal or a motion for leave to withdraw unnecessary for a limited appearance unless the attorney seeks to withdraw from the limited appearance itself. An attorney who has filed and fulfilled a clearly stated limited appearance is presumptively no longer representing the client. Any doubt about the scope of the appearance should be resolved in a manner that promotes the interests of justice and those of the client and opposing party. If the attorney has signed filings beyond the scope of the limited appearance, Rule 11 (b) applies fully and the attorney is deemed to have entered an appearance for the purposes of the filing. Thus, the attorney may not withdraw from the matter of the filing without complying with Rule 89 (a).

A limited appearance is created by the Maine Supreme Judicial Court's rulemaking authority. Consequently, counsel in cases removed to the United States District Court should be aware that limited appearances may not be recognized in the federal forum. *See, e.g.*, Order, *Donovan v. State of Maine*, Civil No. 00-268-P-H (February 16, 2001) (striking partial objection to recommended decision made through purported "limited appearance"); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (noting trial judge not required

to allow hybrid representation); *U.S. v. Campbell*, 61 F.3d 976, 981 (1st Cir. 1982) (same); *O'Reilly v. New York Times Co.*, 692 F.2d 863, 868 (2d Cir. 1982) (same; civil case).

Advisory Committee's Notes
February 15, 1996

Rule 89(a) is amended to require a motion for leave to withdraw as counsel to state the client's last known address and to be served on the client pursuant to Rule 5. The motion of course must be filed with the clerk, "either before service or within a reasonable time thereafter" pursuant to Rule 5(d). The purpose of the amendment is to provide the court with a means of reaching a party for whom substitute counsel does not appear and to assure that the client has notice of the motion to withdraw.

Advisory Committee's Note
September 1, 1973

A new subdivision (a) is added to Rule 89 in order to deal with a lawyer's withdrawal from a case in which he appears as sole counsel for his client, a subject not now covered by the rules. The present Rule 89 relating to visiting lawyers is newly designated as subdivision (b).

Rule 89(a) is taken substantially intact from Local Rule 7(d) of the United States District Court for the District of Massachusetts. It is to be contrasted with Local Rule 4(b) of the District of Maine reading:

> No attorney may withdraw his appearance in any action except by leave of Court.

The new rule does not specify what notice is to be given the client or what considerations the court should take into account on a motion by an attorney for his withdrawal. Such detail is difficult, if not impossible, to spell out in the rule because of the variety of circumstances that may prevail. In general, the court should attempt to avoid prejudice to the client of the withdrawing attorney and at the same time avoid delay to the court and opposing counsel. Usually those objectives are best served by giving the client notice and opportunity to be heard, unless substitute counsel has appeared of record.

Advisory Committee's Note
September 23, 1971

The original Rule 89 referred only to a member of the bar of another state. The word "state" in the context should have been construed to encompass the District of Columbia, but in order to eliminate any possible dispute the benefits of the rule are by this amendment extended expressly to any "member of the bar of any other state or of the District of Columbia.'' This language coincides with that of the simultaneous amendment of Criminal Rule 61 permitting practice by out-of-state lawyers in representing servicemen in minor criminal cases.

Advisory Committee's Note
December 31, 1967

This new rule is similar, with only minor modifications, to local Rule 3(d) of the United States District Court for Maine. See Field and McKusick, Maine Civil Practice 222 (Supp.1967).* It is similar to New Hampshire Superior Court Rule 13 reading as follows:

> An attorney who is not a member of the Bar of this State shall not be allowed to enter his appearance or engage in trial or hearing except on motion which will not ordinarily be granted unless a member of the Bar of this State is associated with him and present at the trial or hearing.

The first sentence of 4 M.R.S.A. § 802 was amended by the 1967 Legislature to make clear the rule-making power of the Supreme Judicial Court in regard to out-of-state lawyers. 1967 Pub.Laws, Chap. 441, Sec. 1. The new Rule 89 changes practice under the prior statute whereby out-of-state lawyers were permitted rather freely to appear in Maine courts without having any local counsel associated with them.

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* [Now 2 Field, McKusick & Wroth, *Maine Civil Practice* at 537 (2d ed. 1970)].