

IN THE SUPREME COURT OF ALABAMA
October 27, 2005



ORDER

IT IS ORDERED that Rule IX, Rules Governing Admission to the Alabama State Bar, be adopted to read in accordance with the appendix attached to this order;

IT IS FURTHER ORDERED that the adoption of Rule IX be effective October 27, 2005;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule IX:

"Note from the reporter of decisions: The order adopting Rule IX, Rules Governing Admission to the Alabama State Bar, effective October 27, 2005, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 2d."

Nabers, C.J., and See, Lyons, Harwood, Woodall, Stuart, Smith, Bolin, and Parker, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 27th day of October, 2005

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX

RULE IX. ADMISSION OF FOREIGN ATTORNEYS AS AUTHORIZED HOUSE
COUNSEL

A. Purpose. This rule is intended to facilitate the relocation of persons employed by or to be employed by any "business organization," as that term is defined in this rule, who will undertake, in whole or in part, to provide legal services for such business organizations in Alabama. Notwithstanding the provisions of Rules I through VII, infra, this rule authorizes attorneys licensed to practice in jurisdictions other than Alabama to be permitted to undertake activities in Alabama while employed exclusively by a business organization without the requirement of taking and passing the Alabama bar examination.

B. Definitions.

(1) Authorized House Counsel. "Authorized house counsel" shall be any person who:

(a) is not a member of the Alabama State Bar but who is licensed to practice law in any state other than Alabama, a United States territory, or the District of Columbia and who is a member in good standing of the entity governing the practice of law in that state, United States territory, or the District of Columbia;

(b) is not subject to a disciplinary proceeding or outstanding order of reprimand, censure, or disbarment, permanent or temporary, for professional misconduct by the bar or courts of any jurisdiction at the time he or she applies for registration under this rule;

(c) has not been permanently denied admission to practice before the bar of any jurisdiction based upon character or fitness at the time he or she applies for registration under this rule;

(d) agrees to abide by the Alabama Rules of Professional Conduct and the Alabama Rules of Disciplinary Procedure, without limitation, and to submit, for disciplinary purposes, to the jurisdiction of the Disciplinary Board and the Disciplinary Commission of the Alabama State Bar and the Supreme Court of Alabama;

(e) is, on the date the person applies for registration under this rule, exclusively employed by a business organization located in the State of Alabama or relocating to the State of Alabama in furtherance of such employment within six months of such application under this rule and receives or shall receive compensation for activities performed for that business organization; and

(f) has registered pursuant to Rule IX.D., infra.

(2) Business Organization. For the purpose of this rule, a "business organization" is a corporation, partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in the State of Alabama that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee, other than from entities constituting the business organization, for the representation or advice of authorized house counsel. For purposes of this rule, a "business organization" does not include a governmental entity, governmental subdivision, political subdivision, school board, or any other entity that has the authority to levy a tax.

C. Activities.

(1) Authorized Activities. Authorized house counsel, as an employee of a business organization, may provide legal services in the State of Alabama to the business organization for which registration pursuant to this rule is effective; provided, however, such services shall be limited to:

(a) giving legal advice to the directors, officers, employees, and agents of the business organization with respect to the business and affairs of the business organization;

(b) negotiating and documenting matters for the business organization; and

(c) representing the business organization in its dealings with any administrative agency or commission having jurisdiction over the business organization; provided, however, authorized house counsel shall not be permitted to make appearances as counsel in any court,

administrative tribunal, agency, or commission situated in the State of Alabama unless the rules governing such court or body otherwise authorize, or unless authorized house counsel is specially admitted by such court or body in a case pursuant to Rule VII.

(2) Disclosure. In undertaking legal services permitted by subdivisions C.(1)(b) or (c) of this rule, authorized house counsel shall disclose to the party with whom authorized house counsel is negotiating or to the administrative agency or commission, as the case may be, his or her capacity by written or printed communication. Such disclosure shall include the name of the business organization, the title or function of authorized house counsel, and a statement that authorized house counsel is not licensed to practice law in the State of Alabama; such disclosure shall be transmitted in a manner reasonably contemplated to create an awareness of authorized house counsel's status with respect to the relevant activity. In making the disclosure required by this subdivision, authorized house counsel shall not represent that they are members of the Alabama State Bar licensed to practice law in this State.

(3) Limitation on Representation. In no event shall the activities permitted under this rule include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, director, or agent of the business organization in any matter or transaction, or the giving of legal advice, unless otherwise permitted or authorized by law, code, or rule, or as may be permitted by Rule IX.C.(1).

(4) Opinions to Third Parties. Authorized house counsel shall not express or render a legal judgment or opinion to be relied upon by any person or party other than in the course of representing the business organization by which authorized house counsel is employed.

D. Registration.

(1) Filing with the Alabama State Bar. An individual seeking to be certified as authorized house counsel under this rule shall file the following documents with the Alabama State Bar:

(a) a certificate from the entity governing the practice of law in each state, United States territory,

or the District of Columbia in which the registrant is licensed to practice law certifying that the registrant:

(i) is a member in good standing of the entity,
and

(ii) has a clear disciplinary record, as required by Rule IX.B.(1).

(b) a sworn statement by the registrant that the registrant:

(i) has read and is familiar with the Alabama Rules of Professional Conduct and the Alabama Rules of Disciplinary Procedure, as adopted by the Supreme Court of Alabama, and will abide by the provisions of those rules;

(ii) submits to the jurisdiction of the Alabama State Bar and the Supreme Court of Alabama for disciplinary purposes, and authorizes the Alabama State Bar to notify, or to receive notification from, the entity governing the practice of law in each state, United States territory, or the District of Columbia in which the registrant is licensed to practice law of any disciplinary action taken against the registrant;

(iii) is not subject to a disciplinary proceeding or outstanding order of reprimand, censure, or disbarment, permanent or temporary, for professional misconduct by the bar or courts of any jurisdiction;

(c) a certificate from a business organization certifying that it is qualified as a business organization as that term is defined in Rule IX.B.(2), that it is aware that the registrant is not licensed to practice law in the State of Alabama, and that it is not relying upon the Alabama State Bar in any manner in employing authorized house counsel;

(d) an appropriate registration application to the Alabama State Bar as promulgated by the Board of Bar Commissioners of the Alabama State Bar; and

(e) a filing fee prescribed and set by the Board of Bar Commissioners of the Alabama State Bar in an amount not to exceed the amount applicable for admission into the bar examination for an attorney licensed in a state other than Alabama.

(2) Review by the Alabama State Bar. Upon receipt of the items set forth in Rule IX.D.(1), the Alabama State Bar shall review the items for compliance with this rule. Any application not meeting the requirements of this rule shall be returned to the applicant. Grounds for return include, but are not limited to, a certificate lacking all the information required by Rule IX.D.(1), a certification from an entity that does not qualify as a business organization as defined by this rule, and failure to remit a correct filing fee.

(3) Certification by Alabama Supreme Court. After reviewing an application for registration as authorized house counsel and determining that he or she has complied with the provisions of Rule IX.D.(1), the Alabama State Bar shall file with the clerk of the Supreme Court of Alabama a) the name and address of the registrant and b) a request that the registrant be certified as authorized house counsel for the business organization. For a registrant employed in Alabama at the time the Bar's request is approved, permission for authorized house counsel to perform services under this rule shall become effective upon approval of the request for certification by the clerk of the Supreme Court of Alabama. If the registrant is not yet in Alabama, the date authorized house counsel is permitted to perform services under this rule shall be the effective date of the registrant's employment in Alabama, but not later than six months from the filing of the items required to be filed by Rule IX.D.(1).

(4) Annual Renewal. The registration required by this rule shall be annual, in a manner consistent with the registration applicable to an attorney licensed to practice in the State of Alabama, including payment of the annual fee equal in amount to the occupational license fee; provided, however, such renewal shall include a statement that the registrant remains in good standing in all states, United States territories, or the District of Columbia in which authorized house counsel is licensed and that he or she is not subject to any disciplinary proceedings in any jurisdiction.

E. Termination or Withdrawal of Registration.

(1) Cessation of Authorization to Perform Services.
Authorization of authorized house counsel to perform services permitted under this rule shall cease upon the earliest of the following events:

(a) termination of employment with the business organization for which registration was filed; provided, however, if authorized house counsel shall begin employment with another business organization within 30 days of the termination, authorization to perform services under this rule for the other business organization shall continue upon authorized house counsel's filing with the Alabama State Bar the certificate described in Rule IX.D.(1)(c) as it pertains to the business organization by which authorized house counsel is then employed.

(b) withdrawal of certification by the business organization;

(c) withdrawal of registration by authorized house counsel;

(d) the relocation of authorized house counsel outside Alabama for a period greater than 160 days;

(e) authorized house counsel's disbarment or suspension from the practice of law by a court or other authorized disciplinary agency of another state, United States territory, the District of Columbia, or by a federal court; or

(f) failure of authorized house counsel to comply with any applicable provision of this rule.

Notice of the occurrence of one of the events set forth in Rule IX.E.(1)(a)-(f), or of a new certificate as provided by Rule IX.E.(1)(a), must be filed with the Alabama State Bar by authorized house counsel within 30 days after such action. Authorized house counsel who has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state, United States territory, the District of Columbia, or by a federal court shall, within 30 days after the effective date of his or her disbarment or suspension, file with the Alabama State Bar a copy of the order or judgment effecting the disbarment or suspension.

Failure to provide such notice by authorized house counsel shall be a basis for discipline pursuant to the Alabama Rules of Disciplinary Procedure.

(2) Notice of Withdrawal of Authorization. Upon receipt of the notice required by Rule IX.E.(1), the Alabama State Bar shall mail a notice of revocation of authority to perform services to authorized house counsel and the business organization employing authorized house counsel.

(3) Reapplication. Nothing herein shall prevent an individual previously registered as authorized house counsel from re-registering as authorized house counsel as set forth in Rule IX.D.

F. Discipline - Termination of Authorization. In addition to any appropriate discipline imposed by the Alabama State Bar, the Disciplinary Commission of the Alabama State Bar may, at any time, temporarily or permanently terminate the registration of authorized house counsel.

G. Transition.

(1) Prior Commission of Unlicensed Practice of Law. Engaging in the unlicensed practice of law by an applicant for registration as authorized house counsel before the effective date of this rule shall not be grounds for denial of registration of the applicant if application for registration is made within six months of the effective date of this rule.

(2) Immunity from Prosecution. Authorized house counsel who is duly registered pursuant to this rule shall not be subject to prosecution for the unlicensed practice of law for acting as counsel to a business organization before the effective date of this rule.