

DON'T GET CAUGHT HOLDING THE BAG FOR OUT-OF-STATE COUNSEL ~ CALENDAR RENEWAL WHEN ACTING AS LOCAL COUNSEL

By: Joseph N. Williams

Last September, we were reminded of the seriousness with which our Supreme Court treats Indiana's rules governing the temporary admission of out-of-state attorneys. In *In re Anonymous*, 932 N.E.2d 1247 (Ind. 2010), the Indiana Supreme Court held that an Indiana attorney violated Professional Conduct Rule 5.5(a)¹ by failing to ensure out-of-state counsel's compliance with Indiana's temporary admission rules. *Id.* at 1250. There, a Kentucky resident who was injured in Indiana sought legal assistance from a Kentucky attorney, who then retained the Respondent to serve as local counsel. *Id.* at 1248. The Kentucky attorney never complied with Indiana Rule of Admission and Discipline 3, which sets forth the procedure for out-of-state attorneys to obtain temporary admission in an Indiana proceeding. *Id.* The real problem arose, however, when the Indiana attorney failed to ensure that his Kentucky co-counsel had followed through on the procedure for obtaining temporary admission.² *Id.* In fact, the Indiana attorney had allowed his co-counsel to appear in the action, argue in court, and take depositions in Indiana without having ever been granted temporary admission. *Id.* at 1248.

When the trial court brought these issues to the attention of the Indiana attorney, his response was to simply provide his co-counsel a copy of the applicable rule – yet, he still failed to ensure that his co-counsel followed-up and obtained temporary admission. *Id.* As a result, the Supreme Court issued the Indiana attorney a private reprimand – *but*, the Court made it clear that future violations may warrant sanctions harsher than a private reprimand:

Indiana attorneys serving as local counsel for out-of-state attorneys are hereby advised of the importance of their duty to ensure complete and timely compliance with all the requirements of Admission and Discipline Rule 3(2). Indiana attorneys who neglect that duty in future cases may be subject to more stringent discipline, and out-of-state attorneys who fail to comply with this rule may be sanctioned for the unauthorized practice of law in this state.

Id. at 1250.

¹ Rule 5.5(a) precludes an attorney from practicing “law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist[ing] another in doing so.”

² It appears from the Court's opinion that the Indiana attorney never even consulted Admission and Discipline Rule 3 until after the trial court informed him that his Kentucky co-counsel had not been granted temporary admission.

The risk of acting as local Indiana counsel cannot be overstated – we are *required* to ensure that the out-of-state counsel that we choose to sponsor comply with all rules and procedures for obtaining temporary admission. Failing in this duty will result in the out-of-state lawyer’s exclusion from practicing before Indiana courts. See Ind. Admission and Discipline Rule 3(2)(b), (c) (stating, “[f]ailure to file the notice within the time specified shall result in automatic exclusion,” and “[f]ailure to pay the required renewal fee within the time specified shall result in automatic exclusion”). Just as terrifying, however, is the fact that we could face a significant disciplinary charge when our out-of-state co-counsel does not comply (or continue to comply) with the Supreme Court’s rules governing temporary admission. To help quell these concerns, I am providing the following checklist to ensure compliance with all facets of the rules governing temporary admission:

- **Pay the fee and receive a temporary identification number.** The process begins with the out-of-state lawyer paying the temporary admission fee of \$130.00 to the Clerk of the Supreme Court and requesting a temporary attorney identification number. Admis. Disc. R. (a)(3).
- **Practice Pointer** – you must include a draft of the verified petition for temporary admission that you intend to file in the trial court. *Id.*
- **File verified petition for temporary admission.** After receiving a temporary attorney identification number, you must file a verified petition for temporary admission before the trial court in which the temporary admission is being sought. Admis. Disc. (a)(4).
- **Practice Pointer** – you must co-sign this petition with your out-of-state counsel, and comply with the laundry list of requirements found in Admis. Disc. (a)(4)(i) through (ix).
- **File notice with Supreme Court.** If the trial court grants the petition for temporary admission, then the out-of-state lawyer must provide written notice to the Supreme Court. Admis. Disc. (b).
- **Practice Pointer** – the notice must include the following: (1) a certificate of good standing from the highest court in each of the jurisdictions that the out-of-state lawyer has been admitted; (2) a copy of the verified petition for admission that was filed in the trial court; and, (3) a copy of the trial court’s order granting the petition.
- **Pay renewal fee to Supreme Court.** If the case in which the out-of-state attorney has been granted temporary admission continues on the first day of a new calendar year, then that lawyer must pay a renewal fee of \$130.00 to the Supreme Court Clerk by January 30th. Admis. Disc. R. (2)(b).

- **Practice Pointer** – while the Indiana Roll of Attorneys sends out reminder letters to the temporarily admitted attorneys, *Indiana counsel will not receive a copy of this reminder*. Therefore, it is incumbent upon Indiana local counsel to keep the renewal date in mind. This date should be calendared in the same way that all other deadlines are calendared.³
- **Indiana counsel must sign all pleadings and papers.** Indiana attorneys serving as co-counsel shall sign all briefs, papers and pleadings in the cause and shall be jointly responsible for anything signed. Admin. Disc. (2)(d).

The Supreme Court's recent decision in *In re Anonymous* highlights the importance of strict adherence to the rules governing the temporary admission of out-of-state attorneys. While there are palpable risks involved with acting as local counsel, these risks can be easily mitigated with diligent adherence to the procedures set forth in Admission and Discipline Rule 3 and free and open communication with out-of-state counsel.

³ Upon renewal, a copy of the Notice of Temporary Admission and check in the amount of \$130.00 must be sent to the following address: Attn. Darla Little, Clerk of the Supreme Court, Records Division, Roll of Attorneys, 402 West Washington, Room W062, Indianapolis, Indiana 46204.