

Serial: 121345

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

***IN RE: MISSISSIPPI RULES OF
APPELLATE PROCEDURE***

ORDER

This matter is before the Court en banc on its own motion for amendment to Rule 46(e) of the Mississippi Rules of Appellate Procedure. Rule 46(e) was recently adopted to establish in Mississippi the Military Legal Assistance Program. Since its adoption, the Court's attention has been directed to recent amendments to federal laws, replacing the Soldier's and Sailor's Civil Relief Act with the newly titled Servicemembers Civil Relief Act. The Court finds that Rule 46(e) should be amended to revise the reference to this act and to add to the types of assistance covered by the Uniform Services Employment and Reemployment Rights Act.

IT IS THEREFORE ORDERED that Rule 46(e) of the Mississippi Rules of Appellate Procedure is hereby amended as set forth in "Exhibit A" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern*

Reporter, Second Series (Mississippi Edition) and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 22nd day of March, 2005.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING
JUSTICE, FOR THE COURT

DIAZ AND GRAVES, JJ., NOT PARTICIPATING.

EXHIBIT “A” TO ORDER

MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 46. ADMISSION, WITHDRAWAL, AND DISCIPLINE OF ATTORNEYS

....

(e) Military Legal Assistance Program

(1) A lawyer admitted to the practice of law in a state or territory of the United States, other than Mississippi, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code § 1044, may apply to the Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Mississippi to represent clients eligible for legal assistance in the courts and tribunals of this state while the lawyer is employed, stationed, or assigned within Mississippi.

(2) Each applicant for a Registered Military Legal Assistance Attorney Certificate shall:

(i) file with the clerk of the Supreme Court an application, under oath, upon a form furnished by the clerk;

(ii) furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction;

(iii) file an affidavit, upon a form furnished by the clerk of the Supreme Court, from the commanding officer, staff judge advocate or chief legal officer of the military base in Mississippi where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the clerk of the Supreme Court immediately upon the termination of the applicant's employment or service at the military base.

(3) Upon a finding by the clerk of the Supreme Court that the applicant has produced evidence sufficient to satisfy the clerk that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the

obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the clerk shall notify the applicant that he or she is eligible to be issued a Registered Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the clerk shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this state solely as provided in this rule.

(4) The practice of a lawyer under this rule shall be subject to the limitations and restrictions of 10 U.S.C. § 1044 and the regulations of that lawyer's military service and shall be further limited to: (i) adoptions, (ii) guardianships, (iii) name changes, (iv) divorces, (v) paternity matters, (vi) child custody, visitation, child and spousal support, (vii) landlord-tenant disputes on behalf of tenants, (viii) consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud, (ix) garnishment defenses, (x) probate, (xi) enforcement of rights under the Soldiers' and Sailors' Servicemembers Civil Relief Act of 1940 (50 U.S.C. App. §§ 501-548, ~~560-593~~ 501 et seq.), and (xii) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., and (xiii) such other cases within the discretion of the court or tribunal before which the matter is pending.

(5) All pleadings filed by a legal assistance attorney shall cite this rule, and include the name, complete address and telephone number of the military legal office representing the client, and the name, grade and armed service of the lawyer registered under this rule providing representation.

(6) No lawyer registered under this rule shall (a) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this state, (b) offer to provide legal services in this state to any person other than as authorized by his or her military service, or (c) hold himself or herself out in this state to be authorized to provide legal services to any person other than as authorized by his or her military service.

(7) Representing clients eligible for legal assistance in the courts or tribunals of this state under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Mississippi, including the Mississippi Rules of Professional Conduct and the Rules of Discipline. Jurisdiction of the Mississippi Bar shall continue whether or not the lawyer retains the Registered Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Mississippi.

(8) Each person receiving a Military Legal Assistance Attorney Certificate shall be registered with the Mississippi Bar as an active member on the basis of that

certificate and shall be subject to the same membership obligations as other active members of the Mississippi Bar, other than the payment of dues and assessments and Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Mississippi Bar, the military address in Mississippi of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(9) Each person issued a Military Legal Assistance Attorney Certificate shall promptly report to the Mississippi Bar any changes in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(10) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (a) the lawyer is no longer employed, stationed, or assigned at the military base in Mississippi from which the affidavit required by this rule was filed, (b) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of the Rules Governing Admission to the Mississippi Bar, (c) the lawyer fails to comply with any provision of this rule, (d) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States other than Mississippi, or (e) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law.

[Amended effective January 16, 2003; amended effective May 27, 2004 to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court with the foreign attorney seeking leave to appear pro hac vice; amended effective January 27, 2005 to provide legal assistance to certain military personnel and their families; amended effective March 24, 2005 to make technical corrections in references to federal laws.]

[Historical Notes and Comment remain unchanged.]