

Serial: 122099

IN THE SUPREME COURT OF MISSISSIPPI
No. 89-R-99018-SCT

***IN RE: MISSISSIPPI RULES OF
PROFESSIONAL CONDUCT***

ORDER

This matter has come before the Court en banc on its own motion for consideration of the amendment of Rule 6.1 of the Mississippi Rules of Professional Conduct. Having considered the matter, the Court finds that the proposed amendment should be adopted.

IT IS THEREFORE ORDERED that Rule 6.1 of the Mississippi Rules of Professional Conduct and the Comment thereto are amended to read 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 21st day of March, 2005.

/s/ Jess H. Dickinson

JESS H. DICKINSON, JUSTICE, FOR THE
COURT

GRAVES, J., DISSENTS.
DIAZ, J., NOT PARTICIPATING.

EXHIBIT “A” TO ORDER

MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

[Rule 6.1 and its Comment are replaced in their entirety to read as they appear in this exhibit.]

PUBLIC SERVICE

RULE 6.1 VOLUNTARY PRO BONO PUBLIC SERVICE

(a) Professional Responsibility. Each member of the Mississippi Bar in good standing and not exempt hereunder, as part of the member’s professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.

(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Services to the Poor. The professional responsibility to provide pro bono legal services to the poor may be discharged by:

(1) annually providing at least 20 hours of pro bono legal services to the poor,
or

(2) annually providing at least 20 hours of pro bono legal services to charitable, religious, civic, community, governmental or educational organizations for the purpose of providing legal counsel and representation to the poor, or

(3) making an annual contribution of at least \$200 to the Mississippi Bar, which will be used by the Bar to provide legal services to the poor through legal aid organizations.

(c) Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. Each member of the bar should strive to individually satisfy the member’s professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been previously approved by The Mississippi Bar and only when providing pro bono legal services to the poor

(1) in a major case or matter involving a substantial expenditure of time and resources; or

(2) through a full-time community or public service staff, or

(3) in any other manner that has been approved by The Mississippi Bar.

(d) Exemptions. Those exempt from the provisions of this rule are:

(1) those lawyers who are restricted from practicing law outside their specific employment,

(2) members of the judiciary and their staff,

(3) other government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, other regulatory prohibitions, or by employment policies,

(4) attorneys employed in established Legal Services Programs, and

(5) members of the bar who have acquired inactive or active exempt status or who are suspended.

Nevertheless, exempt attorneys are encouraged to assist in meeting the needs of the poor for legal services to the extent that they can, whether by monetary contributions or otherwise.

(e) Reporting Requirement. Each member of the bar shall annually certify whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall certify this information through a form that is made a part of the member's annual membership fees statement which shall require the member to report the following information:

(1) the number of hours the attorney dedicated to pro bono legal services,

(2) whether the attorney satisfied the obligation through a collective plan, the name or nature of that plan, and

(3) if the attorney has satisfied the obligation by contribution, the amount of that contribution.

If the attorney has not provided pro bono legal services to the poor in the current year, the form shall so state, and the reason for non-compliance shall be stated. If the attorney is exempt from the obligation to provide pro bono services to the poor, the report shall so state and indicate the nature of the exemption.

(f) Compliance.

The provisions of Rule 6.1(b) are aspirational goals and an affirmation of professional responsibility, but are not mandatory and do not constitute a basis for discipline under the Rules of Discipline for the Mississippi Bar.

The reporting requirements of Rule 6.1(e) are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory Continuing Legal Education.

The Bar shall from time to time, but at least annually, provide the Supreme Court with statistical data regarding compliance, providing such information in such form as the Chief Justice shall direct.

(g) Credit Toward Professional Responsibility in Future Years. In the event that more than 20 hours of pro bono legal service to the poor are provided and reported in any 1 year, the hours in excess of 20 may be carried forward and reported as such for up to 2 succeeding years.

[Amended effective September 12, 1996; amended effective March 24, 2005.]

Comment

Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. All lawyers are urged to provide a minimum of 20 hours of pro bono services to the poor annually. Pro bono legal service to the poor is an integral and particular part of a lawyer's pro bono public service responsibility. As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor, or of moderate means. However, because the legal problems of the poor often involve areas of basic need, their inability to obtain legal services can have dire consequences. The vast unmet legal needs of the poor in Mississippi have been recognized by the Supreme Court of Mississippi. The Supreme Court has further recognized the necessity of finding a solution to the problem of providing the poor greater access to legal service and the unique role of lawyers in our adversarial system of representing and defending persons against the actions and conduct of governmental entities, individuals, and non-governmental entities. As an officer of the court, each member of The Mississippi Bar in good standing has a professional responsibility to provide pro bono legal service to the poor.

Certain lawyers, however, are prohibited from performing legal services outside their employment by constitutional, statutory, rule, or other regulatory prohibitions, or by the policies of their employers. Consequently, members of the judiciary and their staffs,

government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions, members of the bar who are inactive, or suspended are exempt from participation in this program. Those exempt (other than those suspended) and others who, although licensed to do so, do not engage in the practice of law and those who are prevented by their employment from performing legal services for those other than their employers, are, however, encouraged to meet the professional responsibility to render public service to the extent that they can. For definition of "inactive members," see Miss. Code Ann. § 73-3-120(b). These attorneys, should attempt to serve the public good through activities which do not involve pro bono services but promote the public understanding of the legal system. These might include serving, without compensation, in public information and educational programs such as Law Day programs, high school moot court programs, CLE programs and the like.

Attorneys who are employed in Legal Services Programs are specifically exempt, it being recognized that they have chosen to dedicate their entire professional activities to assisting the poor.

In discharging the professional responsibility to provide pro bono legal service to the poor, each lawyer should furnish a minimum of twenty hours of pro bono legal service to the poor annually or contribute \$200 to the Mississippi Bar, which will be used by the Bar to provide legal services to indigents through legal aid organizations. "Pro bono legal service" means legal service rendered without charge or expectation of a fee for the lawyer at the time the service commences. Legal services written off as bad debts do not qualify as pro bono service. Most pro bono service should involve civil proceedings where there is no governmental obligation to provide counsel, given that government must provide indigent representation in most criminal matters. Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard but also to those persons society sees as unable to pay for legal services, those frequently referred to as the "working poor." Lawyers providing pro bono legal service on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. Pro bono legal service to the poor need not be provided only through legal services to individuals; it can also be provided through legal services to charitable, religious, or educational organizations whose overall mission and activities are designed predominantly to address the needs of the poor. For example, legal service to organizations such as a church, civic, or community service organizations relating to a project seeking to address the problems of the poor would qualify. Awards of statutory attorney's fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section.

While the personal involvement of each lawyer in the provision of pro bono legal service to the poor is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of legal service provided to the poor. The annual contribution alternative

recognizes a lawyer's professional responsibility to provide financial assistance to increase and improve the delivery of legal service to the poor when a lawyer cannot or decides not to provide legal service to the poor through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support.

The amount of dollar contribution does not and is not intended to equate with 20 hours of services at the customary hourly rate of private practitioner. It does, however, provide an alternative recognizing that contributions to established legal services organizations can, in some cases, provide a more efficient mechanism for reaching those in need.

The limited provision allowing for collective satisfaction of the 20-hour standard recognizes the importance of encouraging law firms to undertake the pro bono legal representation of the poor in substantial, complex matters requiring significant expenditures of law firm resources and time and costs, and through the establishment of full-time community or public service staffs. When a law firm uses collective satisfaction, the total hours of legal services provided in such substantial, complex matters or through a full-time community or public service staff should be credited among the firm's lawyers in a fair and reasonable manner as determined by the firm.

Neither providing pro bono services nor contributing is mandatory and failure to do so does not result in discipline as a violation of the Rules of Professional Conduct under the Rules of Discipline. However, attorneys are required to comply with the reporting requirements of Rule 6.1(e). The simple reporting requirement of Rule 6.1(e) is designed to provide a sound basis for evaluating the results achieved by this rule, and to remind lawyers of their professional responsibility under this rule. The reporting is designed to be as simple as possible, and does not require itemization of services rendered. Failure to comply with the reporting requirements is handled in the same manner as failure to pay bar dues.

It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation.

[Comment amended September 12, 1996; amended effective March 24, 2005.]