

Serial: 149892

IN THE SUPREME COURT OF MISSISSIPPI
No. 89-R-99012-SCT

***IN RE: RULES GOVERNING
ADMISSION TO THE MISSISSIPPI BAR***

ORDER

This matter is before the Court en banc on the Report and Recommendations of the Special Panel on Rules Governing Admission to the Mississippi Bar. The Panel recommends that **Rule VI. Admission by Comity and Reciprocity** be amended to return to reciprocity admission as opposed to the continuation of the one (1) day attorney's exam. After due consideration, the Court finds that the recommendation is well taken.

IT IS THEREFORE ORDERED that **Rule VI. Admission by Comity and Reciprocity** is hereby amended, effective October 1, 2008, as set forth in Exhibit A, hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall enter this order on the minutes of the Court and that a true certified copy be forwarded to West Publishing Company for publication in the *Southern Reporter Second (Mississippi Edition)* and the *Mississippi Rules of Court*.

SO ORDERED, this the 9th day of October, 2008.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING JUSTICE

GRAVES, J., OBJECTS TO THE REQUIREMENT THAT AN ATTORNEY-APPLICANT MUST CERTIFY AN INTENTION TO ESTABLISH A PERMANENT OFFICE IN MISSISSIPPI.

Exhibit A

RULES GOVERNING ADMISSION TO THE MISSISSIPPI BAR

RULE VI. ADMISSION BY COMITY AND RECIPROCITY

Section 1. Qualification of Applicant.

A. Provided that the laws of the state from which the applicant comes grant similar privileges to attorney applicants from this state, any lawyer from another state whose requirements for admission to the bar are equivalent to those of this state, who has practiced not less than five (5) years and who certifies his intention to establish, within no more than thirty (30) days after admission, a permanent office for the active practice of law in Mississippi, may be admitted to practice in this state without passing the general bar examination as to the applicant's knowledge of law required of all other applicants by Rule IX and upon complying with the other requirements as set out in these Rules Governing Admission to the Mississippi Bar. The Board shall determine whether another jurisdiction grants "similar privileges" to applicants from this state.

B. "A permanent office for the active practice of law" under Subpart A of this Section is a place where the subject attorney intends to perform legal services on a regular basis as a sole practitioner or in association with other attorneys, as a legal officer for a government agency, corporation or other business organization, as a judge or other judicial officer, or as a full-time teacher in a law school, and where he will be personally accessible to Courts, other attorneys, and the public.

C. An applicant who has failed a bar examination administered in this jurisdiction within five (5) years of the date of filing an application under this rule shall not be eligible for admission under this Rule VI.

D. An applicant who has been subject to discipline in another state for conduct which would make the applicant ineligible for admission in this state shall not be eligible for admission under this Rule VI.

[Effective November 1, 1991; amended effective October 1, 2008 as set forth in the Comment.]

Section 2. Application.

Any lawyer from another state desiring to practice in Mississippi must make application to the Board on the same forms as required of applicants for admission by general bar examination. Such application shall be subject to the provisions of Rule III, Sections 1 and 4 and Rule V. In addition, such applicant shall file with the Board evidence of his good standing to practice law in the states in which he has previously been admitted, including a certificate from the Clerk of the highest appellate court of each state in which he has been admitted, and from two (2) members of the bar in each such state, certifying to his qualifications and good standing. The Board or the Committee on Character and Fitness may

make additional inquiry as to the qualifications, good standing, and moral character of the applicant and may require submission of additional evidence by the applicant.

[Effective November 1, 1991; amended May 18, 1999, effective July 1, 1999 for applications for the February 2000 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective October 1, 2008 as set forth in the Comment.]

Section 3. Action on Applications. An application for admission under Rule VI may be made at any time. The Board and its Committee on Character and Fitness shall within a reasonable time investigate such application, and the Board shall act upon such application not later than its next regularly scheduled meeting forwarding receipt of the final report of the Committee on Character and Fitness on such application.

[Effective November 1, 1991; amended effective August 24, 2000, for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective October 1, 2008 as set forth in the Comment.]

Section 4. Fees.

Each application for admission by comity and reciprocity must be accompanied by a fee of \$1,500.00, plus an additional fee in such amount as the National Conference of Bar Examiners may charge in connection with a character investigation in jurisdiction(s) in which the attorney applicant has been previously admitted. The Board shall not accept any application for admission by comity and reciprocity unless accompanied by the full amount of fees due. The Board or the Committee may require payment of additional investigation fees and costs as provided in Rule III, Section 4. Payment of the fee shall be made to the "Board of Bar Admissions". The fee is not refundable in whole or in part.

[Effective November 1, 1991; amended effective August 24, 2000, for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective October 1, 2008 as set forth in the Comment.]

Section 5. Conflict of Laws Among States Concerning Reciprocity and Comity.

If the jurisdiction from which the applicant comes permits the admission of Mississippi judges and lawyers by comity and reciprocity but the rules of such jurisdiction are more stringent and exacting or contain other limitations, restrictions or conditions of admission or require payment of higher fees, the admission of the applicant shall be governed by such rules, and the applicant shall pay the same fees which would apply to applicants from Mississippi seeking admission to the bar in the applicant's former jurisdiction.

[Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008 as set forth in the Comment.]

Section 6. Applicant Licensed to Practice by More Than One State.

If an applicant has been licensed by more than one state, the Board shall determine in its discretion the licensing state to which reference shall be made in determining whether to admit an applicant by comity and reciprocity.

[Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008 as set forth in the Comment.]

Section 7. Definition of Practice of Law.

For purposes of admission under this Rule, practice for not less than five (5) years must consist of active practice of law, after admission to the bar of another jurisdiction, either as a partner or associate of a private or public law firm, as a legal officer of a corporation or other business organization, as a governmental employee whose duties are primarily providing legal advice or representation of the governmental agency in the courts, as a legal officer in the Armed Services, as a judge, magistrate, administrative judge or referee, or law clerk to a judge, or as a full time teacher in a law school approved by the Section on Legal Education and Admission to the Bar of the American Bar Association. Practice of law which qualifies for purposes of this Rule must have occurred within a state or states in which the applicant was then admitted to practice law and must have occurred while applicant was licensed by and in good standing with the court or other agency having authority over the practice of law in such jurisdiction.

[Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008 as set forth in the Comment.]

Comment

This amended rule does away with the requirement of a one (1) day attorney's examination on topics of Mississippi law for attorneys seeking to establish a practice in Mississippi and returns the rule to its pre-1979 format of allowing complete reciprocity with other states granting similar privileges to Mississippi lawyers. The amended rule requires that any lawyer from another state which requires Mississippi attorneys to be examined before admission must take the entire Mississippi Bar Examination.

The rule retains the requirement that an out-of-state lawyer establish a permanent office in Mississippi for the practice of law. It is not the intention of this rule to provide an alternative means of admission for temporary practice in Mississippi, which is governed by the pro hac vice admission rules of the Mississippi Rules of Appellate Procedure.

The five (5) year practice of law requirement contemplates that the work done by the applicant be of a general legal nature but not work that is very narrow in scope, is of a type which need not be performed by an attorney, or does not generally require the services of an

attorney. An attorney's five (5) years of prior practice must have constituted a full-time or regular undertaking and not have been on only an occasional or haphazard basis.

For the purposes of this Rule, the active practice of law does not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.