

/Serial: 100495

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

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

ORDER

This matter has come before the Court en banc on Petition to Amend Rule 46, Mississippi Rules of Appellate Procedure filed by The Mississippi Bar and recommendation of the Supreme Court Advisory Committee on Rules, each proposing revision of Rule 46(b) of the Mississippi Rules of Appellate Procedure. Having considered the petition and the recommendation of the Advisory Committee, the Court finds that the amendment of Rule 46(b) will promote the fair and effective administration of justice and that the petition should be granted to the extent set forth herein.

IT IS THEREFORE ORDERED that the Petition to Amend Rule 46, Mississippi Rules of Appellate Procedure filed by The Mississippi Bar is granted to the extent set forth herein and that Rule 46(b) of the Mississippi Rules of Appellate Procedure is amended as set forth in Exhibit "A" hereto.

IT IS FURTHER ORDERED that Rule 46(b) as amended shall be effective and controlling as to verified applications to appear pro hac vice filed in the courts and administrative agencies of Mississippi from and after March 1, 2003.

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 15th day of January, 2003.

/s/ William L. Waller, Jr.
WILLIAM L. WALLER, JR., JUSTICE
FOR THE COURT

McRAE, P.J., AND EASLEY, J., DISSENT

EXHIBIT “A” TO ORDER

MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 46. ADMISSION, WITHDRAWAL, AND DISCIPLINE OF ATTORNEYS

(a) * * * *

(b) Admission in a Specific Case of Foreign Attorneys Pro Hac Vice.

(1) Terminology

i. “Administrative agency” shall include any agency, department, board or commission of the State of Mississippi, or any county, city, public school district or other political subdivision of the State of Mississippi.

ii. “Appearance” shall include the appending or allowing the appending of the foreign attorney’s name on any pleading or other paper filed or served, or appearing personally before a court or administrative agency or participating in a deposition or other proceeding in which testimony is given. Presentation of uncontested matters to administrative agencies does not constitute appearances as the term is used in this Rule 46(b). Appearance of a foreign attorney shall commence with the first appearance and continue until final determination or until an order permitting the foreign attorney to withdraw has been issued.

iii. “General practice of law” shall be deemed to include, when applied to a foreign attorney, appearances by the foreign attorney in more than five (5) separate unrelated causes or other matters before the courts or administrative agencies of this state within the twelve (12) months immediately preceding the appearance in question.

iv. “Foreign attorney” shall mean an attorney licensed to practice law and in good standing in another state, the District

of Columbia, or other American jurisdiction, but not licensed and in good standing to practice law in Mississippi.

v. “Local attorney” shall mean an attorney who is licensed and in good standing to practice law in Mississippi.

~~(2)(1)~~ *Appearance of Counsel a Foreign Attorney Pro Hac Vice Permitted.* A foreign attorney shall not appear in any cause except as allowed pro hac vice under this Rule 46(b).~~An attorney who is not licensed in good standing to practice law in Mississippi, but who is currently a member in good standing of the bar of another state, the District of Columbia, or other American jurisdiction (hereinafter called a foreign attorney), and~~ A foreign attorney who is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state, may, subject to the provisions of this Rule 46(b), appear as counsel pro hac vice in a particular cause before ~~the Supreme court or the Court of Appeals or~~ any court or administrative agency in this state upon compliance with the conditions stated in this subdivision.

~~(3)(2)~~ *Foreign Attorney Appearing Pro Hac Vice Subject to Local Jurisdiction.* A foreign attorney appearing as counsel pro hac vice before ~~the Supreme Court or the Court of Appeals or~~ any court or administrative agency of this state shall be subject to the jurisdiction of the courts of this state in any matter arising out of the attorney's conduct in such proceedings. The foreign attorney shall study and comply with the standards of professional conduct required of members of the Mississippi Bar and shall be subject to the disciplinary jurisdiction of the courts of this state, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions with respect to any acts occurring during the course of such appearance. A foreign attorney who has been found in an appropriate disciplinary proceeding to have advertised services in violation of Rule 7.2 of the Mississippi Rules of Professional Conduct, or who is employed by or is a member of a firm which has been so found, shall not be granted leave to appear pro hac vice before the courts or administrative agencies of this state.

~~(4)(3)~~ *Association of Local Counsel Attorney.* No foreign attorney may appear pro hac vice before ~~the Supreme Court or the Court of Appeals, or~~ any court or administrative agency of this state unless the foreign attorney has associated in that cause a local attorney ~~an attorney who is a member in good standing of the Mississippi Bar (hereinafter called local counsel).~~ The name of the associated local attorney counsel shall appear on all notices, orders, pleadings, and other papers filed in the cause. The local attorney shall personally appear and participate in all ~~pretrial conferences, hearings, trials,~~

~~and other proceedings conducted in open court, unless specifically excused from such appearance by the court or administrative agency. trials, and, unless specifically excused from such appearance by the court or administrative agency, in all pretrial conferences, hearings, other proceedings conducted in open court and all depositions or other proceedings in which testimony is given in this state.~~ By associating with a foreign attorney in a particular cause, the local counsel accepts joint and several responsibility with such foreign attorney to the client, to opposing parties and counsel, and to the court or administrative agency in all matters arising from that particular cause.

(5)(4) *Verified Application. Informational Affidavit.* A foreign attorney desiring to appear pro hac vice before any court or administrative agency of this state shall file with the subject court or administrative agency a verified application sworn affidavit, together with proof of service by mail, in accordance with the Mississippi Rules of Civil Procedure, of a copy of the application on the Clerk of the Supreme Court. ~~Such affidavit shall be filed not later than the first occasion on which the foreign attorney files any pleading or other paper in the case or appears personally before the court or administrative agency.~~ A copy of the verified application affidavit shall also be served by mail upon all parties who have previously appeared in the cause and shall contain a certification of such service.

The verified application sworn affidavit shall contain the following information:

- i. the name of the court or administrative agency before which the foreign attorney desires to appear as counsel pro hac vice;
- ii. the style of the ~~matter~~ cause in which the foreign attorney desires to appear;
- iii. the full name, residence address, and office address of the foreign attorney;
- iv. each jurisdiction in which the foreign attorney has been admitted and the date of admission;
- v. a statement that the foreign attorney: (a) does not maintain an office within this state, or that the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state and (b) has not engaged in the general practice of law in this state without

being properly admitted and licensed to practice law in this state;

~~vi. v.~~ a statement that the foreign attorney is currently licensed in good standing to practice law in each jurisdiction in which the foreign attorney has been admitted or, if the foreign attorney is not currently licensed in good standing to practice law in any jurisdiction in which the foreign attorney has previously been admitted, a full explanation of circumstances;

~~vii. vi.~~ a statement that the foreign attorney is not currently suspended or disbarred by any jurisdiction in which the foreign attorney has been admitted;

~~viii. vii.~~ a statement of whether or not the foreign attorney has been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five (5) years, and, if so, a full explanation of the circumstances;

ix. a statement that the foreign attorney is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state;

~~x. viii.~~ the style and number of each cause, including the name of the court or administrative agency, in which the foreign attorney has appeared as counsel pro hac vice within this state within the immediately preceding 12 months, is presently appearing as counsel pro hac vice, or has requested admission to appear as counsel pro hac vice;

~~xi. ix.~~ a statement that, unless permitted to withdraw by order of the court or administrative agency, the foreign attorney will continue to represent the client in the cause until the final determination of the cause, and that, with reference to all matters incident to such cause, the foreign attorney consents to the jurisdiction of the courts of the State of Mississippi, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions in all respects as if the foreign attorney were a regularly admitted and licensed member of the Mississippi Bar;

xii.x: the name and office address of the member or members in good standing of the Mississippi Bar whom the foreign attorney has associated in the particular cause; and

xiii.xi: the verified application affidavit of the foreign attorney for appearance pro hac vice shall also be signed by the associated local counsel attorney, certifying the local counsel's attorney's agreement to be associated by the foreign attorney in the particular cause.

Simultaneously with the filing of the application, the foreign attorney shall pay to The Mississippi Bar the sum of \$200 which will be used by the Bar to provide legal services to the indigent, and shall certify to the court or agency and to the Clerk of the Supreme Court that such payment has been made, and shall pay to the Clerk of the Supreme Court the customary miscellaneous docket fee as provided in Miss. Code Ann. § 25-7-3. In cases involving indigent clients, the court or agency may waive the filing fees for good cause shown.

On receipt of any such application, the Clerk of the Supreme Court shall file with the court or agency and serve on all parties a statement indicating all causes or other matters in which the foreign attorney previously requested to appear as counsel pro hac vice, and the date and disposition of each request. No foreign attorney shall appear as counsel pro hac vice until the statement of the Clerk of the Supreme Court has been filed with the court or agency, other than for the purpose of filing the verified application.

(6)Proceedings on Application of Foreign Attorney to Appear as Counsel Pro Hac Vice. The court or administrative agency before which the foreign attorney has applied to appear as counsel pro hac vice shall not rule on the application sooner than twenty-one (21) days after service of the statement by the Clerk of the Supreme Court, except by agreement of the parties.

No hearing on an application to appear pro hac vice is required except upon motion of a party or where the court considers such a hearing to be desirable. Upon motion of a party opposing such appearance, or on the court's motion, a hearing may, in the discretion of the judge, be held to determine whether the foreign attorney has complied with Rule 46(b), but not before the Clerk of the Supreme Court has filed and served the statement provided for under Rule 46(b)(5) above. The foreign attorney and the local attorney shall appear at such hearing.

~~(7) (5) Filing of Order Authorizing Appearance.~~ A foreign attorney shall not appear as counsel pro hac vice before any court or administrative agency until the foreign attorney files with the clerk of the Supreme Court certifies to the court or administrative agency that the foreign attorney has provided a certified copy of the order authorizing such appearance to the Clerk of the Supreme Court.

~~(8) (6) Prohibition of Regular General Practice of Law in Mississippi Under Pro Hac Vice Privilege.~~

i. General Prohibition. No foreign attorney shall appear as counsel pro hac vice before ~~the Supreme Court or the Court of Appeals~~ or any court or administrative agency of this state if the foreign attorney: (a) maintains an office within this state, unless the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state or (b) if the foreign attorney has engaged in the general practice of law in this state without being properly admitted and licensed to practice law in this state.

ii. General Practice Defined. ~~Appearances as counsel pro hac vice by a foreign attorney before any the court courts or administrative agency agencies of this state in on more than five (5) separate unrelated causes or other matters occasions in any 12 month period within the twelve (12) months immediately preceding the appearance in question shall be deemed the general practice of law in this state, which may be performed only by an attorney properly admitted and in good standing as a member of the Mississippi Bar. Appearance of a foreign attorney shall commence with the first appearance and continue until final determination on the merits or until the foreign attorney has obtained an order permitting him to withdraw.~~

iii. Exception for Law Teachers. The limitations in this subdivision ~~(b)(8) (5)~~ shall not apply to a foreign attorney employed full-time as a law school teacher by a law school located in this state, provided that such law teacher must be in good standing in the jurisdictions in which the law teacher is admitted and must associate a local attorney comply with all other requirements of subdivision (b) in order to appear.

~~(9) (7) Suspension or Disbarment Terminates Permission to Appear Pro Hac Vice.~~

i. Foreign Attorney. Permission for a foreign attorney to appear pro hac vice under the provisions of this rule shall terminate upon such attorney's suspension or disbarment in any jurisdiction in which the foreign attorney has been admitted. The foreign attorney shall have the duty to promptly report to the court or administrative agency of this state before which the foreign attorney is appearing any disciplinary action which has been taken in any other jurisdiction.

ii. ~~Local Attorney Counsel.~~ In the event that the local attorney counsel associated by a foreign attorney in a particular case is suspended ~~or disbarred;~~ disbarred or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the foreign attorney shall, before proceeding further in the pending cause, associate a new local attorney who is in good standing to practice law in this state and shall file an ~~verified~~ amendment to the ~~affidavit~~ verified application required by subdivision (b)(5) ~~(4)~~.

(10) ~~(8)~~ *Exclusions.*

i. Appearance Pro Se. Nothing in this rule shall be construed to prohibit any attorney from appearing before any court or administrative agency of this state on the attorney's own behalf in any civil or criminal matter.

ii. United States Attorneys. Attorneys representing the United States government in matters before the courts or administrative agencies of this state shall be permitted to appear on behalf of the United States government and to represent its interest in any matter in which the United States government is interested without the association of local counsel.

(11) ~~(9)~~ *Enforcement.*

i. By Clerks and Filing Officers. No court clerk or filing officer of any administrative agency of this state shall accept or file any pleadings or other papers from a foreign attorney who has not complied with the requirements of this rule. Any pleadings or other papers filed in violation of this rule shall be stricken from the record upon the motion of any party or by the court or administrative agency sua sponte.

ii. By Courts and Administrative Agencies. The courts and administrative agencies of this state shall have the duty and authority to enforce the provisions of this rule by denying violators the right to

appear. If a foreign attorney engages in professional misconduct during the course of a special appearance, the judge or chief officer of the administrative agency before which the foreign attorney is appearing may revoke permission to appear pro hac vice and may cite the foreign attorney for contempt. In addition, the judge or administrative officer shall refer the matter to the disciplinary counsel of the Mississippi Bar for appropriate action by the disciplinary tribunal.

iii. Violation. ~~By the Mississippi Bar.~~ Violation of this rule is deemed to be the unlawful practice of law. The Mississippi Bar, or its designated representatives, shall have the right to take appropriate action to enforce the provisions of this rule under the provisions of Miss. Code Ann. § 73-51-1 (1989).

iv. Cumulative Enforcement. Provisions of this rule shall be cumulative with all other statutes and rules providing remedies against the unauthorized practice of law within the State of Mississippi.

(c) * * * * *

(d) * * * * *

[Adopted to govern matters filed on or after January 1, 1995; amended October 15, 1998, effective from and after January 1, 1999; amended June 24, 1999; amended effective January 16, 2003.]

Advisory Committee Historical Note

Effective January 1, 1995, ~~Miss.R.App.P.~~ Rule 46 replaced Miss.Sup.Ct.R. 46, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXXVI-XC (West Miss.Cases 1994).

Effective October 29, 1992, Rule 46(c) was amended to state that an attorney must have the Court’s approval to withdraw from representation before the Supreme Court. 603-605 So.2d XLVIII-XLIX (West Miss.Cases 1992).

Effective as to verified applications for leave to appear pro hac vice filed on or after March 1, 2003, Rule 46(b) and the Comment to Rule 46 were substantially amended to designate the Clerk of the Supreme Court as the central source from which to obtain a record of appearances by foreign attorneys, to enlarge the definition of “appearance,” to clarify the definition of “general practice of law,” to increase the role of local counsel, and to make other associated changes.

Comment

Rule 46 is based on Fed.R.App.P. 46(c) and the former rules of the Supreme Court. If the verified application affidavit required by Rule 46(b)(5) (4) for admission pro hac vice in a specific case is filed in a trial court or administrative agency, the application affidavit should be included in the record on appeal. In such cases, it is not necessary to file a separate application affidavit in the Supreme Court. Withdrawal from a criminal case is governed additionally by Rule 6(b)(1) of these Rules. The Supreme Court has general disciplinary authority over attorneys practicing in this State. See Miss. Code Ann. § 73-3-301 (Supp.1994). Rule 46(d) recognizes the Court's power to impose sanctions for frivolous pleadings. Cf. M.R.C.P. 11 (sanctions in trial court). ~~The filing required by Rule 46(b)(5) is to provide all courts and agencies with a central source from which to obtain an accurate record of appearances made by foreign attorneys.~~

Major amendments to Rule 46(b) were adopted by order entered effective January 16, 2003 made to Rule 46(b). By the terms of the order adopting those amendments, Rule 46(b) as adopted applies to verified applications for leave to appear pro hac vice filed on or after March 1, 2003.

By the 2003 amendments, Rule 46(b)(1) broadens the previous definition of “appearance,” and clarifies the definition of “general practice of law.” “Appearance” now includes filing or appearing on “any pleading or other paper filed or served” in the cause or matter, “appearing personally before a court or administrative agency,” and “participating in a deposition or other proceeding in which testimony is given.”

“General practice of law” is now defined to include appearance as counsel pro hac vice by a foreign attorney in more than five (5) separate and unrelated causes or other matters before the courts or administrative agencies of this state within the 12 months immediately preceding the appearance in question. Consequently, a foreign attorney may not appear as counsel pro hac vice in more than five separate unrelated cases or other matters within any 12 month period, even if representation is terminated, or appear in more than five pending cases or other matters, regardless of when the appearance commenced.

The 2003 amendments to Rule 46(b) depart from prior practice. Before a foreign attorney may appear as counsel pro hac vice, the foreign attorney must file the required verified application with the court or administrative agency and serve a copy on the Clerk of the Supreme Court. The foreign attorney must then await filing with the court or agency of the statement by the Clerk of the Supreme Court indicating all causes or other matters in which the foreign attorney previously requested to appear as counsel pro hac vice, and the date and disposition of each request. See Rule 46(b)(5). A hearing on the motion may, in the judge's discretion, be held, but is not mandatory. In any event, the hearing will be held only after the Clerk of the Supreme Court has filed and served its statement. In order to allow parties an opportunity to examine the statement, the judge, unless the parties agree otherwise, is not to rule on the motion for 21 days following the filing and service of the statement by the Clerk of the Supreme Court. See Rule 46(b)(6). Other changes to the Rule facilitate the function of the Clerk of the Supreme Court as the central source from which to obtain an accurate record of appearances made by foreign attorneys.

As amended in 2003, Rule 46(b)(4) departs from prior practice and now requires that associated local counsel personally appear and participate in all depositions or other proceedings in which testimony is given in this state, in addition to all trials, pretrial conferences, hearings other proceedings conducted in open court. The local attorney may be specifically excused by the judge from attending proceedings other than trials.

[Amended effective January 16, 2003.]