

Serial: 224839

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99019-SCT

***IN RE: JUDICIAL MANDATORY
CONTINUING LEGAL EDUCATION***

EN BANC ORDER

Before the Court is the Petition to Amend the Mississippi Rules and Regulations for Mandatory Continuing Judicial Education filed by the Mississippi Judicial College. After due consideration, the Court finds that the petition should be granted in part as set forth in Exhibit A.

IT IS THEREFORE ORDERED that the Mississippi Rules and Regulations for Mandatory Continuing Judicial Education are hereby amended as set forth in Exhibit A. These amendments are effective on August 1, 2019.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Third Series, (Mississippi Edition)*.

SO ORDERED, this the 1st day of May, 2019.

/s/ Leslie D. King

LESLIE D. KING, PRESIDING JUSTICE

ALL JUSTICES AGREE.

EXHIBIT A

RULE 1. CONTINUING JUDICIAL EDUCATION COMMITTEE

(a) There is hereby established a Committee on Continuing Judicial Education (hereinafter referred to as the Committee) consisting of six members. The Chief Justice of the Mississippi Supreme Court, or the Chief's designee, shall be an ex-officio member without vote. The Committee shall include three (3) members appointed by the Chief Justice of the Supreme Court upon the recommendation of the divisions of Circuit Court, Chancery Court (including the Youth Court), and County Court (including the Family Court Judge), there being one person to be recommended by each conference. The Chief Justice shall appoint one Supreme Court Justice to represent the Supreme Court Justices and one Court of Appeals Judge to represent the Court of Appeals Judges.

(b) The term of the three (3) trial judges of the Committee shall be for a term of two years and their election by the conference shall be at the annual meeting of the Conference of Mississippi Judges. From and after July 1, 1989, the division of Circuit Court and the division of Chancery Court shall each elect their one representative for a two year term. The County Court division, which includes the Youth Court Judges, together with the appointment of a Justice from the Supreme Court or Court of Appeals, shall be for an initial term of one year; provided, however, that from and after the annual meeting of the Mississippi Judges in the year 1990, the succeeding terms of the County Judge and the Supreme Court Justice or Court of Appeals Judge shall be for a two year term. The Chief Justice shall appoint a judge from the Court of Appeals and the term initially shall be for a term of one and one-half years beginning January 1, 1995; provided, however, that from and after July, 1996, the succeeding terms of the Court of Appeals Judge shall be for a two year term. The term of the ex-officio member of the Committee, shall coincide with his or her term of office. An appointment to fill any vacancy due to the death, resignation or disability of a member shall be for the unexpired term.

(c) The Committee shall have the following duties:

- (1) To exercise general supervisory authority over the administration of these rules.
- (2) To adopt regulations consistent with these rules.

[Amended effective July 1, 1989; August 1, 1994.]

Regulations

1.1 The Chair of the Committee shall be elected by the five (5) voting members of the Committee.

1.2 The Committee shall elect a Vice-Chair and Secretary from among its members.

1.3 The Committee may organize itself into Subcommittees of not fewer than three (3) voting members for the purpose of considering and deciding matters submitted to them except three (3) votes shall be necessary for any action under Rule 6.

1.4 Members of the Committee in the performance of their official duties, shall be reimbursed for expenses subject to reimbursement policies set by the Mississippi Judicial College which funds said reimbursements.

1.5 The Committee may designate such staff as may be necessary and may further delegate executive authority to such staff to conduct the business of the Committee within the scope of the Rules and Regulations, subject at all times, however, to continual review by the Committee and available funding from the Mississippi Judicial College.

[Regulations 1.1 and 1.2 amended effective August 1, 1994.]

RULE 2. SCOPE AND EXEMPTIONS

These rules shall apply to every Justice of the Supreme Court, Judges of the Court of Appeals, and Judges of the Circuit, Chancery, County, Family, Youth Courts, including Youth Court Referees, and Senior Judges under Miss. Code Ann. § 9-1-107 (5), in the State of Mississippi, except for the following persons who shall be exempt from the requirements of these rules:

(1) Workers' Compensation Commission Administrative Judges.

(2) Justice Court Judges, except insofar as statutory requirements of Miss. Code Ann. 9-11-3 and 9-11-4 (Supp. 1986), dictate.

[Amended effective August 1, 1994; January 1, 1998.]

RULE 3. CJE REQUIREMENT

The use of the term "judges" herein shall be deemed to include Senior Judges, Family Court Judges, Circuit Judges, Chancellors, County Court Judges, Youth Court Judges,

including Youth Court Referees, Court of Appeals Judges, and Supreme Court Justices. Each judge and justice in the State of Mississippi shall attend, or complete an approved substitute for attendance, a minimum of twelve (12) actual hours of approved Continuing Judicial Education (CJE) during each successive twelve (12) month period (the “CJE year”) from and after August 1 of each year, of which one hour shall be in the area of legal ethics, professional responsibility, professionalism, (the “ethics/professionalism hour”), except for Youth Court Referees and new judges as hereinafter provided, and provided the funding for said educational programs is available through the Mississippi Judicial College or state travel allowance.

For every new Youth Court Referee there shall be a requirement that every referee, within six (6) months of being appointed to office, receive at least twelve (12) actual hours of juvenile justice training, approved by the Mississippi Judicial College and thereafter complete at least twelve (12) actual hours of juvenile justice training, approved by the Mississippi Judicial College, each CJE year, provided funding is available through the Mississippi Judicial College or state travel allowance.

Every new circuit, chancery, county, family court judge, elected or appointed, there shall be a requirement that every judge shall attend, within one year of taking office, even though (s)he has not taken office, the General Jurisdiction course at the National Judicial College at Reno, Nevada, or other judicial college approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Judicial College or state travel allowance.

Every new justice, elected or appointed, to the Supreme Court and judge, elected or appointed, to the Court of Appeals of the State of Mississippi, shall attend, within one year of taking office, an appropriate appellate judges course approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Supreme Court or state travel allowance, or Mississippi Judicial College.

Every new judge, elected or certified to take office on the Court of Appeals, shall attend an intensive education program to be presented by Mississippi Judicial College or other appropriate appellate course. Said program will be approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Supreme Court, state travel allowance, or Mississippi Judicial College. This intensive course may eliminate the first year course required in the immediate preceding paragraph if approved by the CJE Committee.

[Amended effective August 1, 1994; January 1, 1998; July 1, 2012; August 1, 2019.]

Regulations

3.1 The number of hours required means that the judge or justice must actually attend twelve (12) instructional hours of CJE per year with no credit given for introductory remarks, meal breaks, or business meetings.

3.1.1 Youth Court Referees will only be credited for instructional hours in juvenile justice training, actually attended, which juvenile justice training shall be approved by the Mississippi Judicial College.

3.2 An instructional hour will in all events contain at least fifty (50) minutes.

3.3 Judges or justices who have a permanent physical disability which makes attendance at CJE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The Committee shall review and approve or disapprove such plans on an individual basis and without delay. Rejection of any requested substitute for attendance will be reviewed as provided in Rule 6 prior to any sanction being imposed.

3.4 Other requests for substituted compliance, partial waivers, or other exemptions for hardship or extenuating circumstances may be granted by the Committee upon written application of the judge, and may likewise be reviewed as provided in Rule 6.

3.5 A maximum of twelve (12) hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding CJE year. Such hours must, however, be reported in the Annual Report of Compliance for the CJE year in which they were completed and must be designated as hours to be carried forward.

3.6 Credit will be given only for continuing judicial education activities approved by the Committee on Continuing Judicial Education. Such approval normally must be sought and granted prior to the occurrence of the activity, but may be given retroactively.

3.6.1 Only six hours credit per year can be earned at a Judge Advocate General military course, and no hours may be carried forward from this source. For CJE credit approval, the participating judge/justice shall submit a copy of the program.

3.7.1 Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CJE credit on the basis of six (6) hours of credit for each instructional hour presentation. Presentations accompanied by one or two page outlines or not accompanied by written materials will qualify for CJE credit on the basis

of three (3) hours of credit per hour of presentation. Repeat presentations qualify for one half of the credits available for the initial presentation.

3.7.2 Credit may also be earned through teaching a course in an ABA or AALS approved law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each hour of academic credit awarded by the law school for the course.

3.7.3 Credit may also be earned through authorship of a law journal article on matters of law published by an ABA or AALS approved law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each such article published.

3.8 Credit may be earned through formal enrollment and education of a postgraduate nature in an ABA or AALS accredited law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each hour of academic credit awarded by the law school.

3.9 A maximum of six (6) hours of CJE credit may be claimed for activities where electronically recorded or reproduced material is used.

[Amended effective August 1, 1994; January 1, 1998; August 1, 2019.]

RULE 4. CREDITS.

(a) Credit will be given for CJE programs approved by the Committee on Continuing Judicial Education.

(b) A maximum of twelve (12) hours in excess of the minimum annual requirement may be carried forward for credit in the succeeding year, except those acquired from a Judge Advocate General program. However, no hours completed in the area of legal ethics, professional responsibility, professionalism shall be carried forward.

(c) Credit may be earned through teaching an approved CJE course or teaching a course in law schools approved by the Mississippi Judicial College.

(d) Youth Court Referees may only earn credit by attending juvenile justice training approved by the Mississippi Judicial College.

[Amended effective August 1, 1994; January 1, 1998; July 1, 2012.]

Regulations

4.1.1 The following standards will govern the approval of continuing judicial education activities by the Committee on Continuing Judicial Education.

4.1.2 The activity must have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as a judge.

4.1.3 The activity must deal primarily with matters related to the practice of law, professional responsibility or ethical obligations of judges, and the administration of justice.

4.1.4 The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing judicial education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

4.1.5 The activity itself must be conducted by an individual or group qualified by practical or academic experience. The program, including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

4.1.6 Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Committee on Continuing Judicial Education. Mere outline without citations or explanatory notations will not be sufficient.

4.1.7 The activity must be conducted in a physical setting conducive to learning.

4.1.8 Approval may be given for activities where electronically recorded or reproduced material is used.

4.1.9 Activities that cross academic lines, such as an accounting-tax seminar, may be considered for approval.

4.1.10 At the conclusion of an approved program or activity, each participating judge or justice must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular activity. Within thirty (30) days of the conclusion of the activity a summary of the results of the questionnaire must be forwarded to the Committee. If requested, copies of the questionnaires must also be forwarded to the Committee. Sponsors must maintain the questionnaires for a period of 90

days following a program pending a request for submission of them to the Committee.

4.1.11 The costs of the program itself to the participating judge or justice, apart from optional meals, lodging, travel, etc., must be reasonable considering the subject matter, instructional level, etc.

4.1.12 Each judge or justice, seeking to attend any seminar other than those sponsored by the Mississippi Judicial College shall be responsible for seeking approval from the Committee of the program for CJE credit and funding.

4.1.13 The only continuing judicial education activity approved for Youth Court Referees shall be juvenile justice training approved by the Mississippi Judicial College.

[Amended effective August 1, 1994; January 1, 1998.]

RULE 5. ANNUAL REPORT

On or before August 31 of each year, each judge and justice subject to CJE in the state, shall make a written report to the Mississippi Judicial College, in such form as the college shall prescribe, concerning his or her compliance with these rules accredited judicial education during the preceding CJE year.

[Amended effective July 1, 1989; August 1, 1994; August 1, 2019.]

Regulations

5.1 On or before August 31 of each year, each judge or justice will submit a report to the Mississippi Judicial College concerning completion of hours earned during the preceding CJE year and hours to be carried forward to the next CJE year.

5.2 The files and records of the Mississippi Judicial College are deemed confidential and shall not be disclosed except in furtherance of the duties of the Committee; statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

[Amended effective July 1, 1989; August 1, 1994; August 1, 2019.]

RULE 6. NONCOMPLIANCE AND SANCTIONS

(a) As soon as practicable after October 1 of each year, the Mississippi Judicial College shall compile the following:

- (1) A list of those judges, or justices who have complied with these rules for the prior preceding CJE year ending July 31, as required by Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education.
- (2) A list of judges or justices who have not complied with these rules for the prior preceding CJE year ending July 31 indicating that they have not complied with the requirement of Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education.
- (3) Any request for waiver of these rules from any judge/justice.

(b) The above lists shall then be forwarded to the Committee On Mandatory Continuing Judicial Education who shall then notify, by certified mail, each judge/justice who has not complied with Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education within sixty (60) days, why the judge/justice should not be reported to the Supreme Court for sanction. Said judge/justice shall furnish the Committee with an affidavit:

- (1) Indicating that the judge/justice has complied with the requirement prior to expiration of the sixty (60) days, or
- (2) Setting forth a valid excuse for failure to comply with the requirements because of hardship or other good cause.

(c) At the expiration of sixty (60) days from the date of the Notice to Show Cause, the Committee shall notify the Supreme Court of Mississippi of each judge/justice who fails to file an affidavit satisfactory to the Committee On Mandatory Continuing Judicial Education as described in (b)(1) and (b)(2) above and may recommend appropriate sanctions to the Mississippi Supreme Court. The sanctions are to be determined by said Supreme Court. Said sanctions may include a private reprimand, public reprimand, and/or the publication of the name of said judge in the *Mississippi Lawyer* as not having satisfactorily completed mandatory judicial education, or other appropriate sanction.

(d) At any time after notice of noncompliance to the Supreme Court, a judge/justice may file with the Committee an affidavit indicating compliance with Rules 3 and 5, Rules for Mandatory Continuing Judicial Education; and if satisfactory to the

Committee On Mandatory Continuing Judicial Education, it shall forthwith notify the Supreme Court and may recommend sanctions to be imposed by the Supreme Court.

(e) Any Youth Court Referee who fails to comply with the continuing judicial educational requirements of §43-21-111(2) Miss. Code Ann. or Rule 3 hereof shall be disqualified to serve as a Youth Court Referee, until compliance, in accordance with §43-21-111(2) Miss Code Ann.

[Amended effective July 1, 1989; August 1, 1994; January 1, 1998; August 1, 2019.]