

# Supreme Court adopts rules to encourage pro bono service

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The Mississippi Supreme Court has revised Rules of Professional Conduct for lawyers in an effort to increase the availability of legal services for low income people.

Rule amendments adopted by the Supreme Court address limited scope representation in an effort to encourage lawyers to provide some services to clients who are limited in what they can afford. The Court also adopted a new Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs rule intended to encourage lawyers to provide volunteer services to legal hotlines and clinics without fear of creating conflicts of interest.

Chief Justice Bill Waller Jr. signed an order on behalf of the unanimous Supreme Court adopting the rule amendments on Jan. 19, and a revised order on Jan. 28. The amendments are effective July 1, 2011.

Chief Justice Waller said, "Today's challenging economic circumstances have created heightened needs by members of the public to have access to our courts. These amendments will facilitate opportunities for attorneys across our state to participate in pro bono legal services."

The amendments were proposed by the Access to Justice Commission in an effort to increase low income people's access to legal representation.

Justice Jess Dickinson, a member of the Access to Justice Commission, said, "Often, a lawyer will want to help someone who faces a legal problem, but the potential client is unable to pay and the lawyer just cannot commit the time and resources to handle the entire matter. This rule change will allow the lawyer to provide some help, rather than none at all."

Court of Appeals Judge Donna Barnes of Tupelo, who chaired the Access to Justice subcommittee which submitted proposals for the rule changes, said, "We are extremely excited that these revisions will encourage attorneys to offer additional legal services to low income citizens."

Attorney Rodger Wilder of Gulfport, co-chair of the Access to Justice Commission, said, "The change will be very beneficial. It will encourage more lawyers to provide legal services to low income clients. This is one of a number of changes the Access to Justice Commission will be recommending to help our courts better serve clients of modest means."

Copies of the order and Supreme Court rule amendments are available at this link on the Supreme Court's web site: <http://www.mssc.state.ms.us/Images/Opinions/167564.pdf>.

The Supreme Court in a revised comment to Rule 1.2 of the Mississippi Rules of Professional Conduct regarding scope of representation said, "Limited scope representation is an important means of providing access to justice for all persons regardless of financial resources. Lawyers are encouraged to offer limited services when appropriate, particularly when a client's financial resources are insufficient to secure full scope of services. For example, lawyers may provide counsel and advice and may draft letters or pleadings. Lawyers may assist clients in preparation for litigation with or without appearing as counsel

of record. Within litigation, lawyers may limit representation to attend a hearing on a discrete matter, such as a deposition or hearing, or to a specific issue in litigation.”

Lawyers historically have treated limited scope representation with great caution, fearing the possibility that undertaking part of the work without providing complete representation would be a violation of their professional obligations. But people of limited resources sometimes can't afford to pay a lawyer to represent them through the entire process of a matter in litigation.

The Supreme Court's rule amendments regarding limited scope representation address what has become known as “unbundling” of legal services, allowing a lawyer to undertake specific tasks for a client, without the obligation to represent the client at each step of a legal process.

The Supreme Court, addressing requirements of competent representation under Rule 1.1 of the Mississippi Rules of Professional Conduct, said in a comment to the rule, “An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.” In a separate comment to Rule 1.2 regarding scope of representation, however, the Court noted that any agreed limitation “must be reasonable under the circumstances,” and “does not exempt a lawyer from the duty to provide competent representation.”

Judge Barnes said, “While limited representation does not meet all of the client's needs, it may very well assist certain clients who would not have otherwise been able to obtain any legal representation in a matter.”

LaVerne Edney, general counsel for the Mississippi Volunteer Lawyers Project, said the revised rules are expected to make it easier to recruit volunteer lawyers to represent low-income clients. Edney said that the rules addressing limited scope representation and conflicts of interest will make it easier for MVLP to recruit lawyers to assist with its legal clinics and staff legal hotlines.

“It's a move in the right direction to get more volunteers to take pro bono cases.”

MVLP is constantly searching for lawyers to assist with legal assistance clinics dealing with divorce, child custody, child support, adoptions, guardianships, wills and expungement. In the divorce clinics, for instance, lawyers prepare the pleadings for couples seeking a divorce on grounds of irreconcilable differences. Concerns about professional obligations to represent a client from start to finish are among the factors which have made it difficult to find enough volunteer lawyers.

Lawyers at some of the clinics draft legal documents on site. More lawyers may be willing to participate if they don't have to provide continuing representation after the clinic consultation.

“This will be helpful with those attorneys who had those concerns to know that they can come to a clinic and assist people and be done with it. It allows attorneys to do just that portion of the case,” Edney said.

“We cover the entire state. It's very difficult to find (volunteer) attorneys in some remote counties,” Edney said. With the new rules allowing attorneys to do only part of a proceeding, “What we can do now is have attorneys from Hinds, Madison and Rankin

counties, where we have an abundance of volunteers, prepare the pleadings,” Edney said. Then a lawyer in the area where the client lives would have a simpler task of filing the case and getting an order signed.

Also, concerns about conflicts of interest between a law firms’ clients and the recipients of free legal services have discouraged some lawyers from volunteering their time to answer legal hotlines or participate in free legal clinics.

Edney said, “Attorneys have been concerned about their involvement in clinics and helping with the legal line because they don’t have the opportunity to get those names (of clients) in advance so that a conflicts check can be done with their firms. Especially with the larger law firms, they are concerned they may be conflicted out of a case later on.”

Lawyers must avoid known conflicts of interest. The Supreme Court in a comment to the Nonprofit and Court-Annexed Limited Legal Services Programs rule said that legal advice hotlines and advice only clinics “are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.”

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