

Supreme Court seeks public comments on proposed rule changes

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The Mississippi Supreme Court is seeking public comments on proposed rule changes addressing the unauthorized practice of law, attorney discipline, and a program which assists lawyers and judges who have alcohol, drug or mental health issues.

The Supreme Court set an Oct. 3 deadline for accepting comments from members of the bench, bar and the general public. Public comments should be filed in writing and submitted to the Clerk of the Supreme Court, Gartin Justice Building, P.O. Box 249, Jackson, Mississippi 39205-0249.

All proposed rule changes currently open for comment may be viewed on the Mississippi Judiciary website at this link: <http://www.mssc.state.ms.us/rules/rulesforcomment/rulesforcomment.html>.

The proposed rule changes were submitted by The Mississippi Bar.

Mississippi Bar General Counsel Adam B. Kilgore said, "It is The Mississippi Bar's hope that adoption of the proposed changes related to the unauthorized practice of law will bring clarity to what constitutes the practice of law in Mississippi. Damage from the unauthorized practice of law crosses all demographics and all practice areas. We have seen examples of void divorce decrees, faulty deeds, unperfected security interests, and ineffective bankruptcy filings. In each of these instances, if a licensed Mississippi attorney had handled the matter, the damage to these individuals could have been avoided."

The Bar in a petition filed in June proposed to amend the Mississippi Rules of Appellate Procedure and the Mississippi Rules of Professional Conduct. The proposed rule changes would:

- define what constitutes the practice of law and spell out exceptions which do not constitute unauthorized practice of law by non-attorneys;
- address issues regarding attorneys who are licensed in other states and who undertake representation in Mississippi;
- address jurisdiction of disciplinary authority over lawyers who provide legal services without being licensed in Mississippi.

The Bar proposal calls for exceptions which would make clear that non-lawyers are permitted to take certain actions as lay persons, so long as they do not hold themselves out to be acting as attorneys. Some of the exceptions requested for non-lawyers include:

- lay representation before an administrative agency which authorizes such by statute or rule;
- providing clerical assistance to fill out court forms for someone seeking protection from abuse, harassment and violence;
- clerks and court employees responding to requests for general information from the public;
- victim service representatives;
- pro se representation;
- certain insurance, real estate and lending activities;
- certain professional services involving accounting, architecture, petroleum landmen, foresters, engineers and surveyors.

The Mississippi Bar's Rules of Discipline Study Committee recently requested public comment on its petition to amend the Rules of Discipline of the Mississippi Bar

Kilgore said, "The Mississippi Bar is proposing the changes in an effort to improve the efficiency of the disciplinary process, while providing better access to the public to express ethical concerns and ensuring fairness to the attorneys who are the subject of grievances and complaints. The Bar's primary goal in the attorney discipline process remains to protect the public."

The proposed revisions include changes in the filing, investigation and resolution of complaints against attorneys. The proposals would change some of the time periods for certain actions as a disciplinary case progresses. Also, the proposals call for requiring disbarred attorneys to wait five years before seeking reinstatement to practice. The existing rule requires a three-year wait. The proposal would add a provision to allow attorneys to resign in good standing with the Bar.

Proposed amendments to rules for the Mississippi Bar Lawyers and Judges Assistance Program, LJAP, address issues related to attorneys who lack physical and mental capacity to practice law. The changes seek to assist attorneys who struggle with drug, alcohol or mental health issues while also protecting the interests of their clients and the public.

Proposed rule changes draw a clearer distinction between disciplinary proceedings which affect an attorney's license to practice law, and professional assistance offered through LJAP.

Chip Glaze, director of the Lawyers and Judges Assistance Program, said that proposed changes are intended to encourage attorneys, judges and law students to get help from the confidential program if they are struggling with mental health or addictive disease.

Glaze said, "There is a longstanding misperception that contact with the LJAP program would jeopardize a lawyer's license or somehow place them in the realm of disciplinary action. And that is not the case. It is about assistance with impairment."

The Supreme Court has not yet taken any action on the proposed rule changes. No time table has been set for action by the Supreme Court. Some of the proposals are being studied by the Supreme Court Rules Committee on Civil Practice and Procedure, and others are being studied by the Supreme Court Rules Committee on the Legal Profession. The rules committees will take into account the public comments before making recommendations to the nine-member Supreme Court.

Supreme Court Presiding Justice Jess H. Dickinson, chairman of the Rules Committee on the Legal Profession, said, "The Court encourages comment. We are very interested in the opinions of members of the Bar, the judiciary and the public. Public comment is always helpful in formulating these rules. We are far more interested in what works than what sounds good."

Supreme Court Presiding Justice George C. Carlson Jr., chairman of the Supreme Court Rules Committee on Civil Practice and Procedure, said, "Comments from our lay citizens, lawyers and judges are very important to the overall process as we consider these rules proposals. The Court's rules committees recognize that these comments ultimately will enhance the quality of the final product, which will come in the form of each committee's recommendations to the full Court for final passage."

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