

Serial: **143112**

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

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

ORDER

This matter is before the Court en banc on the Petition to Amend Rule 46 of the Mississippi Rules of Appellate Procedure to Include a Provision for Pro Bono Publicus Attorneys filed by the Mississippi Bar. The rule amendment is attached as Exhibit A.

Having considered the petition, the Court finds that the amendment will promote the fair and efficient administration of justice and that the petition should be granted.

IT IS THEREFORE ORDERED that the Petition to Amend Rule 46 of the Mississippi Rules of Appellate Procedure to Include a Provision for Pro Bono Publicus Attorneys is hereby granted. The rule is amended as set forth in Exhibit A.

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

SO ORDERED, this the 15th day of October, 2007.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING JUSTICE

NOT PARTICIPATING: GRAVES, J.

Exhibit A

RULE 46. ADMISSION, WITHDRAWAL, AND DISCIPLINE OF ATTORNEYS

...

(f) Pro Bono Publicus Attorneys.

(1) Terminology

(i) A "pro bono publicus attorney" is: (a) an inactive member of the Mississippi Bar who is not otherwise engaged in the practice of law; or (b) an attorney licensed in a state other than Mississippi who:

will provide free legal services under the supervision of a qualified legal services provider as defined in this rule;

is licensed to practice law in at least one state and has no record of public discipline for professional misconduct imposed at any time within the past fifteen years and who did not resign or retire from the practice of law with disciplinary charges pending or in lieu of discipline; and

neither asks for nor receives personal compensation of any kind for the legal services rendered under this rule.

(ii) A "qualified legal services provider" for the purposes of this rule is a not-for-profit legal aid organization that is approved by the Mississippi Bar as set forth in this rule. A legal aid organization seeking approval from the Mississippi Bar for purposes of this rule shall file a petition with the Office of General Counsel of the Mississippi Bar certifying that it is a not-for-profit organization and specifically stating:

(a) the structure of the organization and whether it accepts funds from its clients;

(b) the major sources of funds used by the organization;

(c) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(d) the types of legal and non-legal services performed by the organization;

(e) the names of all members of the Mississippi Bar who are employed by the organization or who regularly perform legal work for the organization; and

(f) the existence of professional liability insurance that will cover the pro bono publicus attorney.

(2) Limitations.

(i) Except for the acts and services performed in association with a qualified legal services provider, a pro bono publicus attorney shall not otherwise engage in the active practice of law.

(ii) The pro bono publicus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the pro bono publicus attorney for actual expenses incurred while rendering services. The qualified legal services provider shall

be entitled to receive any court-awarded attorneys fees for representation rendered by the pro bono publicus attorney. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by and through the qualified legal services provider.

(iii) An attorney who complies with this rule permitting practice as a pro bono publicus attorney shall not be deemed to be engaged in the unauthorized practice of law as defined by Miss. Code Ann. § 73-3-55 (1972, as amended), the Mississippi Rules of Professional Conduct and pertinent case law.

(3) *Duties of pro bono publicus attorney.*

Before providing services under the authority of this rule, an attorney shall first present to the Office of General Counsel of the Mississippi Bar an affidavit containing the following:

(i) the attorney's full name, firm name, residence address, principal business address, telephone numbers, jurisdiction or jurisdictions in which the attorney is admitted, and bar identification numbers;

(ii) affirmation that the attorney is an inactive member of the Mississippi Bar or is duly licensed and in good standing and authorized to practice law in at least one state and has no record of public discipline for professional misconduct imposed at any time within the past fifteen years and did not resign or retire from the practice of law with disciplinary charges pending or in lieu of discipline;

(iii) affirmation that in performing all services under the authorization of this rule, the attorney will be acting as a volunteer for a qualified legal services provider;

(iv) affirmation that all services to be performed will be at no charge or expense to the client;

(v) affirmation that the attorney will abide by the Mississippi Rules of Professional Conduct and consents to the jurisdiction of the State of Mississippi for disciplinary action; and

(vi) affirmation that the attorney will not undertake to represent any person other than an eligible legal assistance client for a qualified legal services provider, shall not offer to provide legal assistance in this State to any person or for any matter other than through a qualified legal services provider, and shall not hold himself or herself out in this State to be authorized to provide legal services to any person or for any matter other than through a qualified legal services provider.

[Amended effective October 18, 2007, to provide for pro bono publicus attorneys; Amended effective December 14, 2006, to delete the 21-day waiting period for proceedings on application of foreign attorney to appear pro hac vice; Amended effective January 16, 2003; amended effective May 27, 2004 to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court with the foreign attorney seeking leave to appear pro hac vice; amended effective January 27, 2005 to provide legal assistance to certain military personnel and their families; amended effective March 24, 2005 to make technical corrections in references to federal laws.]

Comment

Rule 46 is based on Fed.R.App.P. 46(c) and the former rules of the Supreme Court. If the verified application required by Rule 46(b)(5) for admission pro hac vice is filed in a trial court or administrative agency, the application should be included in the record on appeal. In such cases, it is not necessary to file a separate application 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).

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. Under the 2003 amendments, the Clerk of the Supreme Court was responsible for filing and serving a statement indicating all causes or other matters in which the foreign attorney previously requested leave to appear as counsel pro hac vice and the date and disposition of each request. By further amendment effective May 27, 2004, Rule 46(b)(5) was redrafted and now requires the attorney to obtain, file and serve the Clerk's statement with the verified application.

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.

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.

The purpose of Rule 46(f) is to permit and encourage attorneys who do not engage in the active practice of law in Mississippi to provide legal representation to persons who cannot afford private legal services. Under certain circumstances, inactive members of the Mississippi Bar as defined by Miss. Code Ann. § 73-3-120(b) and members of bars in other states may provide pro bono legal services in the State of Mississippi. Attorneys over the age of seventy-five (75) who qualify as active members of the Mississippi Bar even if not engaged in the active practice of law are also encouraged to provide pro bono legal representation.

Rule 46(f)(1)(i) provides that a pro bono publicus attorney will provide free legal services provider shall bear ultimate responsibility for the services provided under this rule.

[Comment amended effective October 18, 2007; Comment amended effective January 16, 2003; amended effective May 27, 2004, to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court with the foreign attorney seeking leave to appear pro hac vice.]