

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**IN THE MATTER OF:
AMENDMENTS TO THE MISSISSIPPI RULES OF APPELLATE PROCEDURE
AND THE MISSISSIPPI RULES OF PROFESSIONAL CONDUCT**

MISC. NO. _____

**PETITION TO AMEND CERTAIN RULES OF THE MISSISSIPPI RULES OF
APPELLATE PROCEDURE AND
THE MISSISSIPPI RULES OF PROFESSIONAL CONDUCT
IN ORDER TO DEFINE THE PRACTICE OF LAW IN MISSISSIPPI AND
EXCEPTIONS THERETO
AND TO PROHIBIT THE UNAUTHORIZED PRACTICE OF LAW
IN MISSISSIPPI**

COMES NOW The Mississippi Bar (the Bar), by and through its Board of Bar Commissioners (the Board), and petitions the Mississippi Supreme Court to approve amendments to certain rules of the Mississippi Rules of Appellate Procedure and the Mississippi Rules of Professional Conduct in order to define the practice of law in Mississippi and exceptions thereto and to prohibit the unauthorized practice of law in Mississippi. The recommendations are the result of a two-year study of issues surrounding the unauthorized practice of law in our State by a UPL Task Force authorized by the Board and appointed by the Bar President.

The idea of a UPL Task Force grew out of several recommendations to the Board by the Bar's Unauthorized Practice of Law Committee (UPL Committee) made during a presentation at the Board's September 2008 meeting about a variety of procedural issues the UPL Committee faces in its mission to protect the public from harm caused by the unauthorized practice of law in our State. The Board expressed interest in the Bar undertaking a larger study of the unauthorized practice of law in Mississippi and the enforcement of the prohibition against the unauthorized practice of law.

At its June 2009 meeting, the UPL Committee voted to recommend to the Board the creation of a task force to undertake this larger study of UPL issues in Mississippi. Bar President George Fair appointed a Task Force including Tommy Williams, Chair, Bobby Bailess, Barry Bridgforth, Mark Davis, Tylvester Goss, Vicki Leggett, Bill May, Kelly Hagan Smith, Jim Warren, and David Wilkerson. Ex-Officio members included Paul Randall, Real Property Section Chair, and Brad Hathaway, current UPL Committee Chair. Adam Kilgore, Gwen Combs, Chris Anderson, and Jimmie Reynolds served as Bar liaison staff. The Task Force was charged with undertaking an in-depth review of various issues regarding the unauthorized practice of law.

The Task Force worked throughout the next two Bar years studying UPL issues as to both non-lawyers and attorneys not licensed in Mississippi. Targeted practice areas included administrative law, real estate transactions, litigation, transactional law, arbitration/mediation, and debt management and counseling. The scope of study included statutes, court rules, and case law pertinent to each area.

Early in its work, the Task Force called for public comment from Bar membership through the Bar's weekly on-line newsletter, *Bar Briefs*, regarding their experiences and ideas about the unauthorized practice of law in Mississippi. The Task Force received input from 59 sources. The Task Force also considered source material from numerous entities, including the ABA, other states, particularly Wisconsin and Connecticut who had recently proposed definitions of the practice of law, previous studies undertaken by the Mississippi Bar, and Mississippi case law and statutes. Consideration of proposed amendments to Rule 5.5, Mississippi Rules of Professional Conduct, was based on the ABA Model Rule and the work of an earlier study group appointed by the Mississippi Supreme Court after Hurricane Katrina devastated the law practices of attorneys along the Gulf Coast and displaced lawyers from neighboring states.

The Task Force, after two years of diligent work, completed its study and reported its recommendations to the Board at its June 16, 2011, meeting. The Board voted to recommend to this Honorable Court the following rules and amendments:

1. A definition of the practice of law in Mississippi which the Board, at the recommendation of the Task Force, envisions being placed into current Rule 46, Mississippi Rules of Appellate Procedure. **See ExhibitA.**

2. Proposed Amendments to Rule 5.5, Mississippi Rules of Professional Conduct, which follow fairly closely the ABA Model Rule 5.5 and address issues surrounding attorneys licensed in other states who undertake some sort of representation in Mississippi, be it corporate counsel, transactional representation, arbitrations or mediations not annexed to Mississippi litigation, or practice before a federal court where the federal court does not require a Mississippi law license (immigration being one example). **See ExhibitB.**

3. Enforcement provisions proposed in Rules 2 and 46, Mississippi Rules of Appellate Procedure, and proposed amendments to Rule 8.5, Mississippi Rules of Professional Conduct, addressing the jurisdiction of Mississippi's disciplinary authority over lawyers not licensed in Mississippi but who provide legal services in Mississippi. **See ExhibitC.**

The Bar petitions this Honorable Court to adopt these rules and amendments in order to, first and foremost, provide a definition of the practice of law in Mississippi. Currently there is no specific definition by statute or rule, although case law contains definitions in two cases, *Mississippi Board of Bar Admissions v. Darby* 185 So. 2d 684 (Miss. 1966), and *In Re Williamson*, 838 So. 2d 226 (Miss. 2002). Such a rule would clarify many issues for the Bar's UPL Committee which is charged by the Board with the task of enforcing the prohibition against the unauthorized practice of law.

The proposed amendments to Rule 5.5, Mississippi Rules of Professional Conduct, address an urgent need of the Bar to deal with attorneys licensed in other states

who provide or wish to provide transactional representation in Mississippi for their clients in their states or who wish to represent clients in arbitrations or mediations that happen to be held in Mississippi and are not annexed to any litigation in Mississippi.

Finally, the proposed enforcement language in Rules 2 and 46, Mississippi Rules of Appellate Procedure, clearly provide the Bar and its UPL Committee authority to enforce the prohibition against the unauthorized practice of law. Proposed amendments to Rule 8.5, Mississippi Rules of Professional Conduct, clarify issues of disciplinary authority over attorneys licensed in other states who provide temporary services in Mississippi for their clients in their states.

WHEREFORE, PREMISES CONSIDERED, The Mississippi Bar respectfully recommends and requests that the Supreme Court of the State of Mississippi amend certain rules of the Mississippi Rules of Appellate Procedure and the Mississippi Rules of Professional Conduct in order to define the practice of law in Mississippi, to provide for exceptions to the definition, to prohibit the unauthorized practice of law in Mississippi, and to designate appropriate enforcement authority in order to ensure that the public, the legal system, and the Courts of our State are protected from the harm caused by unauthorized practice.

Submitted this the _____ day of June 2011.

THE MISSISSIPPI BAR

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