

REQUEST FOR COMMENTS

The Supreme Court of Mississippi's Rules Committee on Civil Practice and Procedure seeks comments from the bench, the bar, and the public on the 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, filed by The Mississippi Bar on May 15, 2014. The petition is attached.

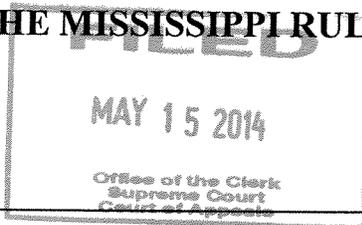
Comments must be filed with the Clerk of Appellate Courts at Post Office Box 249, Jackson, Mississippi 39205. **The filing deadline is March 28, 2016.**

COPY

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. 89-R-99018

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

I. INTRODUCTION & BACKGROUND

The Mississippi Bar (“the Bar”), by and through its Board of Bar Commissioners (“the Board”), 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 (“UPL”) in Mississippi. The recommendations are the result of a two-year study of issues surrounding the unauthorized practice of law in our State by an Unauthorized Practice of Law Task Force (“UPL Task Force” or “Task Force”) authorized by the Board and appointed by the Bar President.

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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") during a presentation at the September 2008 Board 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, former UPL Committee Chair. Adam Kilgore, Gwen Combs, Chris Anderson, and Jimmie Reynolds served as Bar staff liaisons. 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 online newsletter, *Bar Briefs*, regarding their experiences and ideas about the unauthorized practice of law in Mississippi. The Task Force received input from fifty-nine (59) sources. The Task Force also considered source material from numerous entities, including the ABA and other states, particularly Wisconsin and Connecticut who had recently proposed definitions of the practice of law. The Task Force also considered previous studies undertaken by the Mississippi Bar and the development of Mississippi case law and statutes. Consideration of proposed amendments to Rule 5.5 of the 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 Board of Bar Commissioners carefully considered the

recommendations of the Task Force and on June 16, 2011, voted to recommend to the Supreme Court certain rules changes and amendments. The Bar filed a Petition on June 29, 2011, 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.

The Supreme Court posted the Petition for public comment and subsequently extended the period for comment until December 3, 2011. On January 31, 2012, the Supreme Court's Rules Committee on Civil Practice and Procedure voted to refer the comments to the Board of Bar Commissioners and the UPL Task Force for review and response. The Task Force reconvened and considered the comments forwarded by the Supreme Court. In addition, representatives from the Task Force also met with the Supreme Court Rules Committee on February 10, 2012, for discussion of the Petition and comments. Based upon the comments and the meeting with the Supreme Court, the Task Force concluded that the issues the Supreme Court identified needed additional non-lawyer stakeholder input and considered revisions that were centered on the Definition of the Practice of Law and Exceptions to that definition. Further, members of the Task Force interacted

with representatives of certain professional organizations to discuss the potential impact of the proposed changes and to consider amending the Petition as warranted. The issues considered included matters related to the traditional role of petroleum landmen in Mississippi, matters related to closings involving real property, including the role of title insurance companies, and matters related to access to justice. This work continued with the Task Force processing the information gathered and revising the Definition of the Practice of Law and the Exceptions to the Definition. On March 21, 2013, the Supreme Court entered an order dismissing the Bar's June 29, 2011, Petition "so that the Court can address the Bar's revised petition exclusively once such petition is filed." The Task Force continued its work and presented a new petition with changes to the Board of Bar Commissioners, which was approved on June 20, 2013.

In August of 2013, Bar President Guy Mitchell charged the Ethics Committee of the Mississippi Bar to examine the amendments approved by the ABA at the Mid-Year Meeting to the Model Rules from the work of the ABA's Commission on Ethics 20/20. The Ethics 20/20 amendments included changes to Rule 5.5 and 8.5 beyond that considered by the UPL Task Force in addressing foreign lawyers. The Ethics Committee has now completed its study of Rules 5.5. and 8.5 and is in agreement with the

recommendations of the Task Force as approved by the Board of Bar Commissioners.

II. RECOMMENDED AMENDMENTS TO THE RULES

The Bar recommends to this Honorable Court the following rules and amendments:

A. **Miss. R. App. P. 46:** 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 Exhibit A.*

B. **Miss. R. Prof. C. 5.5:** Proposed Amendments to Rule 5.5, Mississippi Rules of Professional Conduct, which follow fairly closely the ABA Model Rule 5.5 prior to the ABA Ethics 20/20 Amendments¹ 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 Exhibit B.*

¹ The Bar does recommend incorporating the ABA's Ethics 20/20 amendments regarding foreign lawyers in Rule 5.5 at this time.

C. Miss. R. App. P. 2; Miss. R. App. P. 46; Miss. R. Prof. C. 8.5: 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 Exhibit C.*

III. PURPOSE OF THE RECOMMENDED AMENDMENTS TO THE RULES

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, *Darby v. Mississippi State Bd. of Bar Admissions*, 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 of the 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.

IV. THIS COURT'S POWER TO AMEND THE RULES

This Court has the statutory power to amend the rules governing the practice of law in the state of Mississippi as granted to it by the Legislature. Additionally and most importantly, this Court has the power to amend these rules as granted to it by the Constitution of the State of Mississippi, independent of any statutory power given to it by the Legislature.

A. Power Granted by the Legislature

The Legislature has codified this Court's power to amend the rules that govern the practice of law by giving it exclusive power and jurisdiction over the admission and discipline of attorneys in this state, as well as the power to make rules governing evidence, practice, and procedure. As such,

this Court can enact the Bar’s requested amendments into law without any legislative action.

In Mississippi Code Section 73-3-2, the Legislature vested this Court with the exclusive “power to admit persons to practice as attorneys in the courts of this state” Miss. Code Ann. § 73-3-2 (West). Further, the Court has the exclusive and inherent authority to regulate the practice of law through disciplinary actions of any attorney who practices law in this state. Miss. Code. Ann. § 73-3-301 (West).

In addition to the exclusive power granted to this Court by the Legislature over admission and discipline, the Legislature has granted the Supreme Court “the power to prescribe from time to time by general rules the forms of process, writs, pleadings, motions, rules of evidence and the practice and procedure for trials and appeals in the Court of Appeals and in the circuit, chancery and county courts of this state....” Miss. Code Ann. § 9-3-61 (West).

Because this Court has statutory authority to admit attorneys to practice in this state, to discipline those admitted, and to promulgate rules governing evidence, practice, and procedure, these statutes grant this Court the power to amend the rules as requested to better define the practice of law.

B. Power Granted by the Constitution of the State of Mississippi

Aside from the power granted by the Legislature, this Court has the power – independent of any statute – to regulate the practice of law in the courts of this state. Article 6 § 144 of the Constitution of the State of Mississippi provides that “[t]he judicial power of the state shall be vested in a Supreme Court and such other courts as are provided for in this constitution.” Miss. Const. Art. 6 § 144. “The phrase ‘judicial power’ in Section 144 of the Constitution includes the power to make rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business.” *Newell*, 308 So. 2d at 76 (quoting *S. Pac. Lumber Co. v. Reynolds*, 206 So. 2d 334, 335 (Miss. 1968)).

This Court has repeatedly held that the Supreme Court of Mississippi has the inherent constitutional power to promulgate rules of practice and procedure. *See e.g., Matthews v. State*, 288 So.2d 714 (1974) (“The inherent power of the Supreme Court to promulgate procedural rules for the efficient disposition of its case load stems from the fundamental constitutional precepts of separation of powers and the vesting of judicial powers in the Courts.”); *Newell v. State*, 308 So. 2d 71 (1975); *Netterville v. MS State Bar*, 397 So. 2d 878 (1981) (holding that, based on its inherent power to discipline members of the legal professions, the statute governing evidentiary hearings against attorneys accused of ethical violations should be

expanded in the interest of due process and fair play and substantial justice); *Glenn v. Herring*, 415 So.2d 695, 696 (1982) (holding that this Court will follow legislature's suggestions regarding procedural rules “unless determined to be an impediment to justice or an impingement upon the constitution”); *Hall v. State*, 539 So.2d 1338, 1344-1346 (1989) (holding that legislature cannot limit rule-making capacity of the Supreme Court); *Stevens v. Lake*, 615 So. 2d 1177, 1183 (1993) (“[S]tatutes which conflict with rules adopted by the Court are void.”); *Winder v. State*, 640 So. 2d 893, 900 at n. 4 (1994) (C.J. Hawkins, specially concurring) (“We have not since 1982 considered it necessary to submit any proposed rules of civil procedure or evidence to the Legislature for approval, nor considered the remaining sections of [Miss. Code Ann. Section 9-3-61] necessary to give us any rule making authority. We have asserted this right independent of any statutory authority”); *Trull v. State*, 811 So.2d 243 (2000) (“Our supreme court has the inherent power to adopt procedural rules governing the trial process, and any statute that conflicts with a rule established by the court is void.”); *Wimley v. Reid*, 991 So.2d 135, 138 (2008) (holding that the procedural statute regarding the filing of a complaint that conflicts with the Mississippi Rules of Civil Procedure would not be enforced); *Jones v. City of Ridgeland*, 48 So. 3d 530, 541 (2010) (holding that “the three-court rule found in the

statute is unconstitutional because it usurps this Court's constitutional rule-making power and violates the doctrine of separation of powers").

In *Darby v. Mississippi State Bd. of Bar Admissions*, , this Court held that the unlicensed practice of law statute provided that "the designated acts under the defined circumstances constitute the unlawful practice of law, but it [did] not encroach on the constitutional power of the judiciary to determine that other acts may also do so The courts have inherent authority, independent of statute, to decide what acts constitute the practice of law." 185 So. 2d 684, 688 (Miss. 1966)

Eleven years later, this Court affirmed and exercised its inherent power in *Newell v. State*,— the cornerstone case on this issue. 308 So. 2d 71 (1975). The main controversy in *Newell* was whether a trial judge had the power to *sua sponte* instruct a jury as to the applicable law of a case, contrary to a procedural statute enacted by the Legislature prohibiting such action. *Id.* at 74. Overriding the statute governing jury instructions, the Court held that the judiciary's constitutional purpose set forth under Article 6 § 144 would be better served if procedural rules were "promulgated by those conversant with the law through the years of legal study, observation and actual trials in accord with their oaths rather than by well-intentioned, but over-burdened, legislators of other pursuits and professions." *Id.* at 76.

Additionally, the Court reasoned that the clear separation of powers set forth in the in Article 6 § 144 of the constitution “leaves no room for the division of authority between the judiciary and the legislatures as to the power to promulgate rules necessary to accomplish the judiciary’s constitutional purpose.” *Id.* at 77.

It is on the basis of this inherent power that this Court has implemented and amended the Mississippi Rules of Civil Procedure, the Mississippi Rules of Evidence, the Mississippi Rules of Appellate Procedure, the Mississippi Uniform Rules of Circuit and County Court Practice, the Mississippi Uniform Chancery Court Rules, and the Uniform Rules of Procedure for Justice Court. *See* 3 MS Prac. Encyclopedia MS Law § 19:142. Most notably of these are the Mississippi Rules of Civil and Appellate Procedure. In 1981, the Mississippi Supreme Court adopted the Mississippi Rules of Civil Procedure to govern practice and procedure in all chancery, circuit, and county courts in Mississippi in all civil cases. *See* Order Adopting the Mississippi Rules of Civil Procedure (May 26, 1981). Once again in 1994, without any approval from the Legislature, the Mississippi Supreme Court prescribed upon its own motion the Mississippi Rules of Appellate Procedure which govern administration, practice, and procedure in the Court of Appeals and the Supreme Court in order to

“promote the prompt, fair, and efficient administration of justice on appeal.”

See Order Adopting the Mississippi rules of Appellate Procedure (Dec. 15, 1994).

Likewise, the Court has exercised its power by amending the Mississippi Rules of Professional Conduct on several occasions. *See e.g.*, No. 89-R-99018-SCT, Serial 131968 (amending Rule 1.15); No. 89-R-99018-SCT, Serial 127394 (amending Rule 1.15 and Rule 2.2); No. 89-R-99018-SCT, Serial 122099 (amending Rule 6.1); No. 89-R-99018-SCT, Serial 113838 (amending Rule 7.2, 7.5, 7.1, and 8.5). Further, the Court in the promulgation of the Rules of Discipline for the Mississippi State Bar (“MRD”), clearly states its exclusive and inherent jurisdiction to regulate the conditions under which someone may engage in the practice of law in this State. Rule 1 (a), MRD. “The license to practice law in this State is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters.” Preamble, MRD. The Court is the ultimate judge of all matters arising under the Rules. Rule 1(a), MRD.

Just as this Court found in *Darby* and *Newell* and as it has exercised in the past by independently promulgating rules of practice and procedure, this Court is not bound to wait on the Legislature to make these requested

changes to the rules. It, in fact, should not do so in the interest of separation of powers and the efficient administration of justice. It is clearly within this Court's inherent power granted by the Constitution of this State to enact these amendments to the rules as requested in the promotion of the prompt, fair, and efficient administration of justice. Additionally, as the Court found in *Newell* and stated in its order adopting the rules of appellate procedure, it would be in the interest of the efficient administration of justice for this Court rather than the Legislature to consider and enact these rules, since the learned justices of this Court are better equipped to know what amendments to the rules would best serve to govern the practice of law for the bench and bar of Mississippi. Because this Court has the inherent Constitutional power – independent of any statute – to enact rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business, this Court has the inherent authority to make the amendment to the rules governing the unauthorized practice of law as requested.

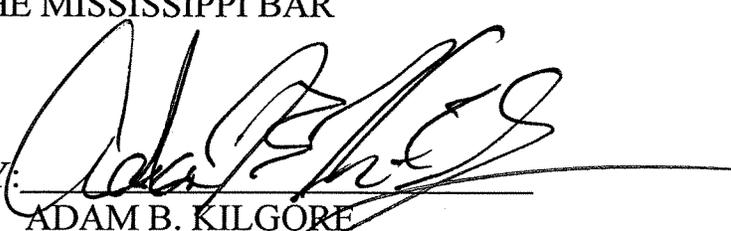
III. RECOMMENDATION & REQUEST

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 15th day of May 2014.

THE MISSISSIPPI BAR

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~~ADMISSION, WITHDRAWAL, AND DISCIPLINE OF ATTORNEYS~~

**RULE 46. LICENSE REQUIRED TO PRACTICE LAW IN MISSISSIPPI;
UNAUTHORIZED PRACTICE OF LAW PROHIBITED;
ADMISSION PRO HAC VICE; MILITARY LEGAL ASSISTANCE
PROGRAM; PRO BONO PUBLICUS ATTORNEYS**

~~(a) — Admission to Practice. Attorneys who have not been admitted to practice in the Supreme Court or the Court of Appeals shall not be permitted to argue orally, or file briefs or any paper in any cause in either Court. Upon presentation to the clerk of a certified copy of the order of a trial court admitting an attorney to practice in this state, together with a certificate of good standing from the Executive Director of the Mississippi Bar, the clerk may admit such attorneys to practice before the Supreme Court and the Court of Appeals and administer the oath to each such attorney.~~

- (1) **Who May Practice Law in Mississippi. A person who is duly licensed to practice law in this state by the Mississippi Supreme Court and who is an active member of The Mississippi Bar may practice law in Mississippi.**
- (2) **Definition of the Practice of Law. The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:**
 - (a) **Holding oneself out as, representing oneself to be, or designating oneself as an attorney, lawyer, counselor, advisor, or in any other capacity which directly or indirectly represents that such person is either qualified or capable of performing or is engaged in the business or activity of performing any act constituting the practice of law as herein defined; and/or leading others to believe that one is authorized to practice law in Mississippi.**
 - (b) **Undertaking to give advice or instruction to another in any matter involving the application of legal principles to facts, purposes, or desires, or advising or counseling another with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to the rights, duties, obligations, or liabilities of another.**

- (c) Undertaking to prepare, write or dictate for another documents or instruments of any character requiring knowledge of legal principles or legal documents or agreements involving or affecting the legal rights of a person. The terms “documents” or “instruments” include, but are not limited to, bills of sale, deeds of conveyance, deeds of trust, mortgages, contracts, last wills and testaments, easements, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, trusts, family settlement agreements, powers of attorney and like or similar instruments, and pleadings and any other papers incident to legal actions and special proceedings.
- (d) Certifying or opining concerning titles to real estate other than such person’s own or in which such person may own an interest.
- (e) Undertaking to represent the interest of another before any tribunal whether judicial, administrative, executive, or in a formal dispute resolution process.
- (f) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or the evaluation or interpretation of procedures to implement such transaction where such transaction, documents, or procedures affect the legal rights, obligations, liabilities, or interests of such person.
- (g) Undertaking to close a transaction involving the transfer of an interest in property via bill of sale, deed of conveyance, deed of trust, mortgage, contract or lease.
- (h) Undertaking to close a transaction involving the holding, receiving or disbursing the funds of a third person.
- (i) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Mississippi as established by case law, statute, court rule, ruling, or other authority.

- (3) Exceptions. Notwithstanding the provisions of subparts (1) or (2) hereof, a license to practice law and active membership in The Mississippi Bar are not required for a person engaged in any of the following activities in Mississippi, so long as (i) one is not holding oneself out as, representing oneself to be, or designating oneself as an attorney or lawyer and/or is not leading others to believe that one is authorized to practice law in Mississippi, and (ii) the Supreme Court of the State of Mississippi has not by rule or by published opinion determined that the activity constitutes the unlicensed or unauthorized practice of law:
- (a) Activities which are authorized by any statute of the State of Mississippi.
 - (b) Activities which are preempted by federal law or procedure.
 - (c) A lawyer not admitted to practice in Mississippi or a title company may close a transaction and/or hold, receive and/or disburse the funds of a third person in another state in which such lawyer is admitted to practice or such title company is authorized to do business if such transaction involves the transfer of an interest in property in Mississippi if a lawyer admitted to practice in Mississippi is retained or associated to assist and advise in the preparation of documents to be recorded in Mississippi and other matters governed by Mississippi law to the extent such documents and other matters are supervised by the lawyer admitted to practice in Mississippi.
 - (d) A non-lawyer person working under supervision of a lawyer admitted to practice in Mississippi or a lawyer authorized to practice in Mississippi in compliance with Rule 5.5, Mississippi Rules of Professional Conduct, as amended, may close a transaction involving the transfer of an interest in property and/or involving the holding, receiving or disbursing the funds of a third person to the extent such non-lawyer person acts merely as an administrative agent to sign documents and does not give advice or counsel to any person, or represent or purport to represent the interest of any person or entity, in regard to the transfer of any interest in property or the evaluation or interpretation of documents or procedures to implement such

transaction or any other matters affecting the legal rights, obligations, liabilities, or interests of any person or entity.

- (e) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where (i) such services are confined to representation before such a forum or other conduct reasonably ancillary to such representation; and (ii) such conduct is authorized by statute or the department or agency has adopted a rule expressly permitting and regulating such practice.
- (f) Providing clerical assistance to another to complete a court-approved form when no fee is charged to do so.
- (g) Acting as a lobbyist as authorized by Section 5-8-1, et seq., of the Mississippi Code of 1972, as amended.
- (h) Serving in a neutral capacity as a clerk or a court employee responding to requests for general information from the public.
- (i) Public officials acting within the scope of their official duties.
- (j) Acting as a non-lawyer advocate under the supervision of a court of the State of Mississippi.
- (k) Acting as a victim service representative acting with the scope of the statutes of the State of Mississippi.
- (l) Serving in a neutral capacity or as a decision maker, but not as an advocate, in the role of mediator, arbitrator, conciliator or facilitator of dispute resolution.
- (m) Participation as decision maker or advocate in labor negotiations, arbitrations, mediations or conciliations arising under collective bargaining rights or agreements.
- (n) A non-lawyer entity's or organization's acting through lawyers otherwise authorized to practice law in Mississippi, to the extent that such lawyers perform *pro bono* legal services for non-profit

organizations, low-income clients, or otherwise in the public interest.

- (o) Military legal assistance provided pursuant to Rule 46, Mississippi Rules of Appellate Procedure.
- (p) *Pro Bono Publicus* assistance provided pursuant to Rule 46, Mississippi Rules of Appellate Procedure.
- (q) An entity or organization in the business of insurance guarantee or indemnity, or the sale of insurance or financial products permitted to be offered by insurance companies, or a self-insured entity or organization, or any employee or contractor of any of the foregoing entities or organizations when conducting their customary insurance business, which includes but is not limited to: (1) investigating or adjusting claims against it or its insured; (2) negotiating with other persons or entities; (3) conducting loss control functions; (4) underwriting business; (5) selling insurance or financial products permitted to be offered by insurance companies or providing advice and counsel with respect to such insurance or products; (6) the preparation of releases or settlement agreements; (7) using a lawyer employee or captive lawyer admitted to the bar in Mississippi or otherwise permitted to practice law in Mississippi to represent its principal or corporate affiliate, or an insured or noninsured for whom a defense is provided; and (8) any act required of an insurer by law.
- (r) Acting as a real estate broker or real estate salesperson as authorized by Section 73-35-1, et seq., of the Mississippi Code of 1972, as amended, including without limitation (i) the preparation of a contract for the sale of real estate for which the broker or salesperson is the listing or selling agent or (ii) receiving, holding and disbursing funds comprising earnest money under a contract for the sale of real estate or as part of the closing of a transaction involving the transfer of an interest in real estate for which the broker or salesperson is the listing or selling agent.

- (s) A lender or an employee or principal of a business entity that is a lender making a loan and undertaking any necessary steps to close the loan transaction, including the preparation and negotiation of any document or instrument to which such lender is a party.
- (t) Any state or federally chartered financial institution or affiliate of such an institution, when engaging in an activity that is within its authority under applicable state or federal law, including any employee providing services for it in connection with that activity;
- (u) A licensed dealer of motor vehicles, farm equipment, all-terrain vehicles, airplanes, motorcycles, boats, personal watercraft or other vehicles for which certificates of title are issued to provide proof of ownership and perfection of liens or an employee or principal of a business entity that is a dealer selling a vehicle and undertaking any necessary steps to close the transaction involving the sale of the vehicle and/or the making of a loan secured by the vehicle sold by the dealer, including the preparation and negotiation of documents related to the sale and/or conveyance of the vehicle to which the dealer is a party and/or related to the loan or security for the loan to which the dealer is a party.
- (v) A licensed manufactured home dealer or an employee or principal of a business entity that is a dealer selling a manufactured home and undertaking any necessary steps to close the transaction involving the sale of the manufactured home and/or the making of a loan secured by the manufactured home sold by the dealer, including the preparation and negotiation of documents related to the sale and/or conveyance of the manufactured home to which the dealer is a party and/or related to the loan or security for the loan to which the dealer is a party.
- (w) A person with a license certifying his or her qualifications as a

certified public accountant by the State Board of Public Accountancy practicing within the scope of practice allowed by the State Board of Public Accountancy under Section 73-33-1, et seq., of the Mississippi Code of 1972, as amended, or performing such services under the supervision of a professional holding such a license, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

- (x) A person with a license certifying his or her qualifications as an architect by the State Board of Architecture practicing within the scope of practice allowed by the State Board of Architecture under Section 73-1-1, et seq., of the Mississippi Code of 1972, as amended, including without limitation the preparation of construction contracts, subcontracts for a construction project, contracts for architectural services, bonds for a construction project or other instruments related to construction projects on behalf of a party to the instrument when the party is one to whom the architect is providing contractual services as an architect, or performing such services under the supervision of a professional holding such a license, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.
- (y) A person engaged in the lease, purchase, sale, or transfer, or acts related to the lease, purchase, sale, or transfer, of an interest in land, a mineral interest, a mining interest, or an easement or other interest in connection with the exploration, production or transportation of oil, gas or other sources of energy if the person is acting on his own behalf or on behalf of a company or other person or entity engaged in the exploration, production or transportation of such sources of energy.
- (z) A Registered Forester practicing within the scope of practice allowed by the State Board of Registration for Foresters under

Section 73-36-1, et seq., of the Mississippi Code of 1972, as amended, including without limitation drafting, writing, dictating or otherwise preparing any instruments affecting timber buying, logging contracting, timber or rights in timber on behalf of a party to the instrument when the party is one to whom the forester is providing contractual services as a forester, or performing such services under the supervision of a Registered Forester, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(aa) A Professional Engineer practicing within the scope of practice allowed by the Board of Licensure for Professional Engineers and Surveyors under Section 73-13-1, et seq., of the Mississippi Code of 1972, as amended, including without limitation drafting, writing, dictating or otherwise preparing any instrument relating to an engineering project on behalf of a party to the instrument when the party is one to whom the engineer is providing contractual services as an engineer for the engineering project, including without limitation the preparation of construction contracts, subcontracts for a construction project, contracts for engineering services, bonds for a construction project or other instruments related to construction projects on behalf of a party to the instrument when the party is one to whom the engineer is providing contractual services as an engineer, or performing such services under the supervision of a Professional Engineer, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(bb) A Professional Surveyor practicing within the scope of practice allowed by the Board of Licensure for Professional Engineers and Surveyors under Section 73-13-1, et seq., of the Mississippi Code of 1972, as amended, including without limitation drafting, writing, dictating or otherwise preparing any plat for a

condominium or subdivision of real estate or plat of survey on behalf of a party to the instrument when the party is one to whom the surveyor is providing contractual services as a surveyor, or performing such services under the supervision of a Professional Surveyor, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

- (cc) Making abstract or certifying titles to real estate by any title guaranty companies incorporated under the laws of this state where it acts through some person as agent, authorized under the laws of the State of Mississippi to practice law, and making or certifying to abstracts of title to real estate by any abstract company chartered under the laws of the State of Mississippi with a paid-up capital of Fifty Thousand Dollars (\$50,000.00) through the president, secretary or other principal officer of such company.
- (dd) Pro se representation by any person as authorized by Article 3, Section 25 of the Mississippi Constitution and the preparation, writing or dictating of any document or instrument by a party to such document or instrument.
- (ee) Representation of an entity by a lawyer employee or captive lawyer admitted to the bar in Mississippi or otherwise permitted to practice law in Mississippi under Rule 46 or representation by such lawyer of any corporate affiliate of said entity.
- (ff) Representation by an employee or principal of a business entity acting solely for the entity in Justice Court for the collection of a debt owed to the entity or for the eviction of a tenant from property of the entity and the entity acting without an attorney may not seek an award of attorney's fees.
- (gg) A non-lawyer person employed by or under contract with and working under supervision of a lawyer admitted to practice in

Mississippi or a lawyer authorized to practice in Mississippi in compliance with Rule 5.5, Mississippi Rules of Professional Conduct, as amended, may prepare, write or dictate for another documents or instruments requiring knowledge of legal principles or legal documents or agreements involving or affecting the legal rights of a person.

(hh) A lawyer not admitted to practice in Mississippi providing legal services in Mississippi as authorized by the provisions of Rule 5.5, Mississippi Rules of Professional Conduct, as amended.

(4) Unauthorized Practice of Law Prohibited. Except as provided herein, a person shall not engage in the practice of law in Mississippi, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Mississippi by the Mississippi Supreme Court and is an active member of The Mississippi Bar.

(5) Governmental Agencies. Nothing in this Rule shall affect the ability of a governmental agency and/or its employees to carry out its responsibilities as provided by law.

(6) Admission of Foreign Attorneys *Pro Hac Vice*

(a) *Terminology.*

i. “Administrative agency” shall include any agency, department, board or commission of the State of Mississippi, or any county, city, public school district or other political subdivision of the State of Mississippi.

ii. “Appearance” shall include the appending or allowing the appending of the foreign attorney’s name on any pleading or other paper filed or served, or appearing personally before a court or administrative agency or participating in a deposition or other proceeding in which testimony is given. Presentation of uncontested matters to administrative agencies does not constitute appearance as the term is used in this Rule 46(b) (6). Appearance of a foreign attorney shall commence with the first appearance and continue until final determination or until an order permitting the foreign attorney to withdraw has been issued.

iii. “General practice of law” shall be deemed to include, when applied to a foreign attorney, appearances by the foreign attorney in more than five (5) separate unrelated causes or other matters before the courts or administrative agencies of this state within the twelve (12) months immediately preceding the appearance in question.

iv. “Foreign attorney” shall mean an attorney licensed to practice law and in good standing in another state, the District of Columbia, or other American jurisdiction, but not licensed and in good standing to practice law in Mississippi.

v. “Local attorney” shall mean an attorney who is licensed and in good standing to practice law in Mississippi.

(b) *Appearance of a Foreign Attorney Pro Hac Vice Permitted.* A foreign attorney shall not appear in any cause except as allowed pro hac vice under this Rule 46(b)(6). A foreign who is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state, may, subject to the provisions of this in this Rule 46(b)(6), appear as counsel pro hac vice in a particular cause before any court or administrative agency in this state upon compliance with the conditions stated in this subdivision.

(c) *Foreign Attorney Appearing Pro Hac Vice Subject to Local Jurisdiction.* A foreign attorney appearing as counsel *pro hac vice* before any court or administrative agency of this state shall be subject to the jurisdiction of the courts of this state in any matter arising out of the attorney's conduct in such proceedings. The foreign attorney shall study and comply with the standards of professional conduct required of members of the Mississippi Bar and shall be subject to the disciplinary jurisdiction of the courts of this state, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions with respect to any acts occurring during the course of such appearance. A foreign attorney who has been found in an appropriate disciplinary proceeding to have advertised services in violation of Rule 7.2 of the Mississippi Rules of Professional Conduct, or who is employed by or is a member of a firm which has been so found, shall not be granted leave to appear *pro hac vice* before the courts or administrative agencies of this state.

(d) *Association of Local Attorney.* No foreign attorney may appear *pro hac vice* before any court or administrative agency of this state unless the foreign attorney has associated in that cause a local attorney. The name of the associated local attorney shall appear on all notices, orders, pleadings, and other papers filed in the cause. The local attorney shall personally appear and participate in all trials, and, unless specifically excused from such appearance by the court or administrative agency, in all pretrial conferences, hearings, other proceedings conducted in open court and all depositions or other proceedings in which testimony is given in this state. By associating with a foreign attorney in a particular cause, the local counsel accepts joint and several responsibility with such foreign attorney to the client, to opposing parties and counsel, and to the court or administrative agency in all matters arising from that particular cause.

(e) *Verified Application, Clerk's Statement and Filing Fees.* A foreign attorney desiring to appear *pro hac vice* before any court or administrative agency of this state shall file with the subject court or administrative agency and with the Clerk of the Supreme Court (1) a verified application and (2) a statement obtained from the Clerk of the Supreme Court indicating all causes or other matters in which the foreign attorney previously requested leave to appear as counsel *pro hac vice* showing the date and disposition of each request. Such application and statement shall be accompanied by a certificate of service on all parties in accordance with the Mississippi Rules of Civil Procedure.

The verified application shall contain the following information:

- i. the name of the court or administrative agency before which the foreign attorney desires to appear as counsel *pro hac vice*;
- ii. the style of the cause in which the foreign attorney desires to appear;
- iii. the full name, residence address, office address, voice and facsimile telephone numbers, and e-mail address, if any, of the foreign attorney;
- iv. each jurisdiction in which the foreign attorney has been admitted and the date of admission

- v. a statement that the foreign attorney: (a) does not maintain an office within this state, or that the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state and (b) has not engaged in the general practice of law in this state without being properly admitted and licensed to practice law in this state;
- vi. a statement that the foreign attorney is currently licensed in good standing to practice law in each jurisdiction in which the foreign attorney has been admitted or, if the foreign attorney is not currently licensed in good standing to practice law in any jurisdiction in which the foreign attorney has previously been admitted, a full explanation of circumstances;
- vii. a statement that the foreign attorney is not currently suspended or disbarred by any jurisdiction in which the foreign attorney has been admitted;
- viii. a statement of whether or not the foreign attorney has been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five (5) years, and, if so, a full explanation of the circumstances;
- ix. a statement that the foreign attorney is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state;
- x. the style and number of each cause, including the name of the court or administrative agency, in which the foreign attorney has appeared as counsel pro hac vice within this state within the immediately preceding 12 months, is presently appearing as counsel pro hac vice, or has requested admission to appear as counsel pro hac vice;
- xi. a statement that, unless permitted to withdraw by order of the court or administrative agency, the foreign attorney will continue to represent the client in the cause until the final determination of the cause, and that, with reference to all matters incident to such cause, the foreign attorney consents to the jurisdiction of the courts of the State of Mississippi, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions in all respects as if the foreign attorney were a regularly admitted and licensed member of the Mississippi Bar; xii. the name and office address of the member or members in good standing of the

Mississippi Bar whom the foreign attorney has associated in the particular cause; and

xii. the name and office address of the member of members in good standing of the Mississippi Bar whom the foreign attorney has associated in the particular cause; and

xiii. the verified application of the foreign attorney for appearance *pro hac vice* shall also be signed by the associated local attorney, certifying the local attorney's agreement to be associated by the foreign attorney in the particular cause.

Simultaneously with the filing of the application, the foreign attorney shall pay to The Mississippi Bar the sum of \$200 which will be used by the Bar to provide legal services to the indigent, and shall certify to the court or agency and to the Clerk of the Supreme Court that such payment has been made, and shall pay to the Clerk of the Supreme Court the customary miscellaneous docket fee as provided in Miss. Code Ann. § 25-7-3. In cases involving indigent clients, the court or agency may waive the filing fees for good cause shown.

(f) *Proceedings on Application of Foreign Attorney to Appear as Counsel Pro Hac Vice.* No hearing on an application to appear *pro hac vice* is required except upon motion of a party or where the court considers such a hearing to be desirable. Upon motion of a party opposing such appearance, or on the court's motion, a hearing may, in the discretion of the judge, be held to determine whether the foreign attorney has complied with Rule 46(b)(6).

(g) *Order Authorizing Appearance.* A foreign attorney shall not appear as counsel *pro hac vice* before any court or administrative agency until the foreign attorney certifies to the court or administrative agency that the foreign attorney has provided a copy of the order authorizing such appearance to the Clerk of the Supreme Court **and to The Mississippi Bar.**

(h) *Prohibition of General Practice of Law in Mississippi Under Pro Hac Vice Privilege.*

i. General Prohibition. No foreign attorney shall appear as counsel *pro hac vice* before any court or administrative agency of this state if the foreign

attorney: (a) maintains an office within this state, unless the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state or (b) has engaged in the general practice of law in this state without being properly admitted and licensed to practice law in this state.

ii. General Practice . Appearances by a foreign attorney before the courts or administrative agencies of this state in more than five (5) separate unrelated causes or other matters within the twelve (12) months immediately preceding the appearance in question shall be deemed the general practice of law in this state, which may be performed only by an attorney properly admitted and in good standing as a member of the Mississippi Bar. Appearance of a foreign attorney shall commence with the first appearance and continue until final determination on the merits or until the foreign attorney has obtained an order permitting him to withdraw.

iii. Exception for Law Teachers. The limitations in this subdivision ~~(b)(8)~~ **(6)(h)** shall not apply to a foreign attorney employed full-time as a law school teacher by a law school located in this state, provided that such law teacher must be in good standing in the jurisdictions in which the law teacher is admitted and must associate a local attorney in order to appear.

(i) Suspension or Disbarment Terminates Permission to Appear Pro Hac Vice.

i. Foreign Attorney. Permission for a foreign attorney to appear pro hac vice under the provisions of this rule shall terminate upon such attorney's suspension or disbarment in any jurisdiction in which the foreign attorney has been admitted. The foreign attorney shall have the duty to promptly report to the court or administrative agency of this state before which the foreign attorney is appearing any disciplinary action which has been taken in any other jurisdiction.

ii. Local Attorney. In the event that the local attorney associated by a foreign attorney in a particular case is suspended, disbarred or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the foreign attorney shall, before proceeding further in the pending cause, associate a new local attorney who is in good standing to practice law in this state and shall file an amendment to the verified

application required by subdivision ~~(b)(5)~~ (6)(e).

(j) *Exclusions.*

i. *Appearance Pro Se.* Nothing in this rule shall be construed to prohibit any attorney from appearing before any court or administrative agency of this state on the attorney's own behalf in any civil or criminal matter.

ii. *United States Attorneys.* Attorneys representing the United States government in matters before the courts or administrative agencies of this state shall be permitted to appear on behalf of the United States government and to represent its interest in any matter in which the United States government is interested without the association of local counsel.

(k) *Enforcement.*

i. *By Clerks and Filing Officers.* No court clerk or filing officer of any administrative agency of this state shall accept or file any pleadings or other papers from a foreign attorney who has not complied with the requirements of this rule. Any pleadings or other papers filed in violation of this rule shall be stricken from the record upon the motion of any party or by the court or administrative agency sua sponte. A request for the issuance of a subpoena pursuant to Rule 45(a)(3) of the Rules of Civil Procedure is not subject to this Rule.

ii. *By Courts and Administrative Agencies.* The courts and administrative agencies of this state shall have the duty and authority to enforce the provisions of this rule by denying violators the right to appear. If a foreign attorney engages in professional misconduct during the course of a special appearance, the judge or chief officer of the administrative agency before which the foreign attorney is appearing may revoke permission to appear pro hac vice and may cite the foreign attorney for contempt. In addition, the judge or administrative officer shall refer the matter to the disciplinary counsel of the Mississippi Bar for appropriate action by the disciplinary tribunal.

(l) *Violation.* Violation of this rule is deemed to be the unlawful practice of law. The Mississippi Bar, or its designated representatives, shall have the right to take appropriate action to enforce the provisions of this rule under the provisions of Rule 46 and of Miss. Code Ann. § 73-51-1 (1989).

(m) *Cumulative Enforcement.* Provisions of this rule shall be cumulative with all other statutes and rules providing remedies against the unauthorized practice of law within the State of Mississippi.

~~(c) — **Withdrawal.** An attorney who appears before the Supreme Court or the Court of Appeals in an appeal or other proceeding may withdraw from the representation only with the approval of the appropriate court. If an attorney desires to withdraw, the attorney shall file a motion giving the attorney's reasons for desiring to withdraw and requesting approval of the appropriate court. Such motion shall be served upon the attorney's client and upon all parties. The motion shall be accompanied by an appearance form of substitute counsel or a signed statement by the client indicating that the client agrees to proceed *pro se*, or shall explain why neither can be obtained.~~

~~(d) — **Disciplinary Power of the Court Over Attorneys.** Every petition, motion, brief, or other paper filed by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. The appellate court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested by the attorney, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar, or for failure to comply with these rules or any order of the Supreme Court or the Court of Appeals, or for filing any frivolous petition, motion, brief, or other paper.~~

(7) **Military Legal Assistance Program**

(a) A lawyer admitted to the practice of law in a state or territory of the United States, other than Mississippi, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code § 1044, may apply to the Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Mississippi to represent clients eligible for legal assistance in the courts and tribunals of this state while the lawyer is employed, stationed, or assigned within Mississippi.

(b) Each applicant for a Registered Military Legal Assistance Attorney Certificate shall:

i. file with the clerk of the Supreme Court an application, under oath, upon a form furnished by the clerk;

ii. furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction;

iii. file an affidavit, upon a form furnished by the clerk of the Supreme Court, from the commanding officer, staff judge advocate or chief legal officer of the military base in Mississippi where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the clerk of the Supreme Court immediately upon the termination of the applicant's employment or service at the military base.

(c) Upon a finding by the clerk of the Supreme Court that the applicant has produced evidence sufficient to satisfy the clerk that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the clerk shall notify the applicant that he or she is eligible to be issued a Registered Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the clerk shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this state solely as provided in this rule. **The clerk shall provide a copy of the Military Legal Assistance Attorney Certificate to The Mississippi Bar.**

(d) The practice of a lawyer under this rule shall be subject to the limitations and restrictions of 10 U.S.C. § 1044 and the regulations of that lawyer's military service and shall be further limited to: (i) adoptions, (ii) guardianships, (iii) name changes, (iv) divorces, (v) paternity matters, (vi) child custody, visitation, child and spousal support, (vii) landlord-tenant

disputes on behalf of tenants, (viii) consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud, (ix) garnishment defenses, (x) probate, (xi) enforcement of rights under the Service members Civil Relief Act (50 U.S.C. App. § 501 et seq.), (xii) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., and (xiii) such other cases within the discretion of the court or tribunal before which the matter is pending.

(e) All pleadings filed by a legal assistance attorney shall cite this rule, and include the name, complete address and telephone number of the military legal office representing the client, and the name, grade and armed service of the lawyer registered under this rule providing representation.

(f) No lawyer registered under this rule shall (a) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this state, (b) offer to provide legal services in this state to any person other than as authorized by his or her military service, or (c) hold himself or herself out in this state to be authorized to provide legal services to any person other than as authorized by his or her military service.

(g) Representing clients eligible for legal assistance in the courts or tribunals of this state under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Mississippi, including the Mississippi Rules of Professional Conduct and the Rules of Discipline. Jurisdiction of the Mississippi Bar shall continue whether or not the lawyer retains the Registered Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Mississippi.

(h) Each person receiving a Military Legal Assistance Attorney Certificate shall be registered with the Mississippi Bar as an active member on the basis of that certificate and shall be subject to the same membership obligations as other active members of the Mississippi Bar, other than the payment of dues and assessments and Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Mississippi Bar, the military address in Mississippi of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(i) Each person issued a Military Legal Assistance Attorney Certificate

shall promptly report to the Mississippi Bar any changes in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(j) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (a) the lawyer is no longer employed, stationed, or assigned at the military base in Mississippi from which the affidavit required by this rule was filed, (b) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of the Rules Governing Admission to the Mississippi Bar, (c) the lawyer fails to comply with any provision of this rule, (d) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States other than Mississippi, or (e) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law.

(8) Pro Bono Publicus Attorneys.

(a) *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.

(b) *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 **Rule 46**, Miss. Code Ann. § 73-3-55 (1972, as amended), the Mississippi Rules of Professional Conduct and pertinent case law.

(c) *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.

(d) Certificate.

Each person receiving a Pro Bono Publicus Attorney Certificate from the Office of General Counsel for The Mississippi Bar shall be registered with the Mississippi Bar as a Pro Bono Publicus Attorney but shall not be required to pay dues or assessments or meet Continuing Legal Education requirements. Each person issued a Pro Bono Publicus Attorney Certificate shall promptly report to The Mississippi Bar any changes in employment, address, bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

Proposed Amendments to Rule 5.5 and Comment
Mississippi Rules of Professional Conduct

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or ~~(b)~~ assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer who is not admitted to practice in Mississippi shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in Mississippi for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Mississippi.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Mississippi that:

(1) are undertaken in association with a lawyer who is admitted to practice in Mississippi and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in Mississippi or in another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Mississippi or in another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that the legal services do not involve the drafting or preparation of any document to be filed for public record affecting an interest in real property .

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in Mississippi that

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which Mississippi requires *pro hac vice* admission; or

(2) are services that the lawyer is authorized to provide by state or federal law in Mississippi.

Any lawyer providing legal services in Mississippi pursuant to paragraph (d) must register with The Mississippi Bar and pay a registration fee annually.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (a) if the

lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1, 7.4 and 7.7.

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[7] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraphs (c)(1) and (3), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, paragraph (c)(2) requires the lawyer to obtain that authority. See Rule 46, Mississippi Rules of Appellate Procedure.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply,

the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation for the client.

[9] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear.

[10] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[11] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case if court rules or law so require. See Rule 46, Mississippi Rules of Appellate Procedure.

[12] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[13] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[14] If a lawyer establishes an office or other systematic presence in Mississippi for the purpose of rendering legal services pursuant to paragraph (d), the lawyer must register with The Mississippi Bar and pay a registration fee annually.

[15] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation, or judicial precedent.

[16] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5.

[17] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) must inform the client that the lawyer is not licensed to practice law in this jurisdiction.

[18] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Lawyers must communicate the availability of their services to prospective clients in this jurisdiction in compliance with Rules 7.1 through 7.7 of the Mississippi Rules of Professional Conduct.

Proposed Amendments to Rule 2 of the Mississippi Rules of Appellate Procedure

**RULE 2. PENALTIES FOR NONCOMPLIANCE WITH RULES;
ATTORNEYS WHO APPEAR BEFORE THE SUPREME COURT OR
COURT OF APPEALS; SUSPENSION OF RULES**

(a) Dismissal of Appeal.

(1) *Mandatory Dismissal.* An appeal shall be dismissed if the notice of appeal was not timely filed pursuant to Rules 4 or 5.

(2) *Discretionary Dismissal.* An appeal may be dismissed upon motion of a party or on motion of the appropriate appellate court (i) when the court determines that there is an obvious failure to prosecute an appeal; or (ii) when a party fails to comply substantially with these rules. When either court, on its own motion or on motion of a party, determines that dismissal may be warranted under this Rule 2(a)(2), the clerk of the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen (14) days after notification, the appeal shall be dismissed by the clerk of the Supreme Court. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official. Motions for additional time in which to file briefs will not be entertained after the notice of the deficiency has issued.

(b) **Other Sanctions.** The Supreme Court or the Court of Appeals may, after reasonable notice given by the clerk of the Supreme Court and opportunity to show cause to the contrary, and after hearing, if requested, impose such sanctions as may be appropriate on any party, court reporter, trial court clerk, or attorney who fails to comply with these rules or any order issued pursuant to these rules. Trial court judges have concurrent jurisdiction to sanction any party, court reporter, trial court clerk, or attorney who fails to comply with Rules 3, 10, and 11. A copy of any such sanction order shall be served on the clerk of the Supreme Court and may be reviewed by the Supreme Court for abuse of discretion.

(c) **Admission to Practice.** Attorneys who have not been admitted to practice in the Supreme Court or the Court of Appeals shall not be permitted to argue orally, or file briefs or any paper in any cause in either Court. Upon presentation to the clerk of a certified copy of the order of a trial court admitting an attorney to practice in this state, together with a certificate of good standing from the Executive Director

of the Mississippi Bar, the clerk may admit such attorneys to practice before the Supreme Court and the Court of Appeals and administer the oath to each such attorney.

(d) **Withdrawal.** An attorney who appears before the Supreme Court or the Court of Appeals in an appeal or other proceeding may withdraw from the representation only with the approval of the appropriate court. If an attorney desires to withdraw, the attorney shall file a motion giving the attorney's reasons for desiring to withdraw and requesting approval of the appropriate court. Such motion shall be served upon the attorney's client and upon all parties. The motion shall be accompanied by an appearance form of substitute counsel or a signed statement by the client indicating that the client agrees to proceed *pro se*, or shall explain why neither can be obtained.

(e) **Disciplinary Power of the Court Over Attorneys.** Every petition, motion, brief, or other paper filed by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. The appellate court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested by the attorney, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar, or for failure to comply with these rules or any order of the Supreme Court or the Court of Appeals, or for filing any frivolous petition, motion, brief, or other paper.

(f) **Suspension of Rules.** In the interest of expediting decision, or for other good cause shown, the Supreme Court or the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, in civil cases the time for taking an appeal as provided in Rules 4 or 5 may not be extended.

Proposed Amendments to Rule 8.5 and Comment
Mississippi Rules of Professional Conduct

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also

subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

~~In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See Rule 5.5. It is settled law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. Nothing in this rule shall be construed to allow an unlicensed individual to engage in the practice of law in Mississippi contrary to any other rule or statute. See also Mississippi Rules of Discipline 1(1.1) and 16. The language in Rule 8.5 is reflective of that set forth in the ABA's Model Rules of Professional Conduct. The scope of Rule 8.5 is not intended to extend to advertisements such as those referenced in Rule 7.5(b)(7), unless they are for the purpose of~~

soliciting clients to commence or join in litigation to be performed in Mississippi.

~~If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.~~

~~Where the lawyer is licensed to practice law in two jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal, where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.~~

A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that

jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.