

New rule allows military attorneys to practice law in state courts

January 27, 2005

The Mississippi Supreme Court on Thursday, Jan. 27, adopted a new rule which will allow military lawyers from other states to appear in Mississippi state courts to assist military personnel and their eligible dependents.

The rule is known as the Military Legal Assistance Program. The Mississippi Supreme Court adopted the rule in recognition of the need for legal services by persons on active duty with the military. The rule is intended to allow lawyers from other states who are members of the military stationed in Mississippi to provide civil legal assistance to military personnel of limited financial means. Eligibility for assistance is determined by the military, not by the courts.

Practice areas are limited to adoptions; guardianships; name changes; divorces; paternity matters; child custody and visitation; child and spousal support; landlord-tenant disputes on behalf of tenants; consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud; garnishment defenses; probate; enforcement of rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. C. Sections 501-548, 560-593); and such other cases within the discretion of the court or tribunal before which the matter is pending.

The admission to limited practice under the Military Legal Assistance Program does not apply to representation in criminal proceedings.

Out-of-state-lawyers in the military are not allowed to engage in private legal practice under this rule. Their representation is limited to assisting clients authorized by military service.

The rule says, in part, "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 Section 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."

Out-of-state lawyers admitted to limited practice under the Military Legal Assistance Program are subject to the same rules of professional conduct and discipline as lawyers who are licensed in Mississippi. Each person receiving a Military Legal Assistance Attorney Certificate will become a member of the Mississippi Bar. They are, however, exempt from paying bar dues and from continuing legal education requirements.

The rule is modeled on recommendations of the American Bar Association. The ABA in February 2003 called upon each state to adopt a rule for the purpose of providing low-income military service members and their dependents with access to free civil legal assistance from military attorneys in certain areas of civil law.

The rule is an amendment to Rule 46 of the Mississippi Rules of Appellate Procedure, which covers admission to practice, withdrawal and discipline of attorneys in Mississippi courts.

The order and the rule are posted on the Supreme Court's Internet web site, www.mssc.state.ms.us. Go to "Decisions," click "Hand Down Lists," then go to the decisions list for 01-27-2005.

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