

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R-99027

IN RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

ORDER

This matter has come before the Court en banc, on its own motion, for consideration and adoption of standards and qualifications of attorneys representing those under sentence of death seeking post-conviction relief. Having considered the matter, the Court finds that the interest of the fair and efficient administration of justice will be served by the adoption of such standards and qualifications, and that the Mississippi Rules of Appellate Procedure should be amended to incorporate such standards and qualifications.

IT IS THEREFORE ORDERED that Rule 22 of the Mississippi Rules of Appellate Procedure be amended as set forth in Exhibit "A" to this order.

IT IS FURTHER ORDERED that the standards and qualifications here adopted shall be effective as to attorneys appointed or retained from and after the entry of this Order to represent those under sentence of death seeking post-conviction relief.

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

SO ORDERED, this the 24th day of June, 1999.

WILLIAM L. WALLER, JR., JUSTICE,

FOR THE COURT

EXHIBIT "A" TO ORDER

(Added language is indicated by underscoring; deleted language by ~~strikeout~~.)

RULE 22. APPLICATION FOR POST-CONVICTION COLLATERAL RELIEF IN CRIMINAL CASES

(a) Filing of Applications. Applications for post-conviction collateral relief in criminal cases may be governed by Miss. Code Ann. § 99-39-1, et seq. (Suppl 1994). ~~In the event that any application shall be filed which fails to comply substantially with the formal requirements of the statute, the clerk of the Supreme Court shall notify the filing party in default apprising the party of the nature of the default.~~ If any application fails to comply substantially with the statute, the clerk of the Supreme Court shall give written notice of the default, appraising the party of the nature of the deficiency. If the deficiencies are not corrected within thirty days, the application may be dismissed.

[Adopted to govern matters filed on or after January 1, 1995; amended effective January 1, 1999 and June 24, 1999.]

(b) Post-conviction Applications by Persons Under Sentence of Death. Within thirty days, the Attorney General, or his designated Assistant Attorney General, shall respond in writing, and pursuant to these rules to each application in criminal cases where post-conviction collateral relief is sought by or on behalf of a person under sentence of death. Within fifteen days following the filing of the response of the Attorney General, the prisoner petition may file a rebuttal to the response of the Attorney General.

[Amended effective January 1, 1999.]

(c) Standards and qualifications for attorneys appointed or retained to represent those under sentence of death in post-conviction proceedings.

Counsel representing those under a sentence of death seeking post-conviction relief shall,

- (1) Be admitted to practice law in Mississippi, being a member in good standing of the Bar for at least five years immediately preceding the appointment, or admitted pro hac vice pursuant to order entered under M.R.A.P. 46, and being a member in good standing of that attorney's home jurisdiction for a like period immediately preceding the appointment,
- (2) Be admitted to practice in the federal courts of Mississippi and before the Fifth Circuit, or, in the case of attorneys appearing pro hac vice, admitted to the federal district courts and the circuit court of appeals having jurisdiction in their home areas,
- (3) Have practiced in the area of state criminal appeals or post-conviction proceedings for three years immediately preceding appointment,
- (4) Have not previously represented the capital defendant in the case either in the trial court or in the

direct appeal, unless the defendant and counsel expressly request continued representation and waive all potential issues that are foreclosed by continued representation, and

(5) Have within three years immediately preceding the appointment been lead counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, and have prior experience as lead counsel in the appeal of at least three felony convictions and at least one post-conviction proceeding; or, in the alternative, have within such period been lead counsel in the appeal of at least six felony convictions, at least two of which were appeals from murder convictions, and lead counsel in at least two post-conviction proceedings.

Provided, however, under exceptional circumstances, and with the consent of the Supreme Court, an attorney may be appointed who does not meet the stated qualifications upon a showing that the attorney's experience, stature and record enable the Court to conclude that the attorney's ability significantly exceeds the standards set forth in the rule.

[Adopted effective June 24, 1999 by order entered that date.]

(d) Education and training of attorneys appointed or retained to represent those under sentence of death in post-conviction proceedings. Effective July 31, 2000, an attorney serving as post-conviction counsel in a case wherein the defendant is under a sentence of death shall have within one year prior to his appointment or employment successfully completed twelve hours training or educational programs in the area of capital defense through a program accredited by the Mississippi Commission on Continuing Legal Education or by the American Bar Association.

[Adopted June 24, 1999 by order entered that date.]