

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R -99002 SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter has come before the Court, en banc, upon the Court's on motion for the deletion of Rule 601(b) of the Mississippi Rules of Evidence, and upon consideration of a proposed amendment to the comment to Rule 601 suggested by the Mississippi Supreme Court Rules Advisory Committee. Having considered the matter, the Court finds that such amendment to Rule 601 and the comment thereto will promote the fair and efficient administration of justice and that it should be adopted.

NOW, THEREFORE, IT IS ORDERED that Rule 601 of the Mississippi Rules of Evidence be and the same is hereby amended by deleting Rule 601(b), and the existing Rule 601(c) be and the same is now designated Rule 601(b).

IT IS FURTHER ORDERED that the Advisory Committee Comment and the historical notes to Rule 601 be and the same is hereby amended to read as follows:

Advisory Committee Historical Note

Effective January 31, 1990, Rule 601 was amended to reflect the decision in *Hudspeth v. State Highway Com'n of Mississippi*, 534 So. 2d 210 (Miss. 1990). The rule was amended by the decision in *Fuselier v. State*, 702 So. 2d 388, decided Oct. 1997.

Comment

This rule sets out the special provisions which render certain persons incompetent to testify. As originally written, Rule 601 excepted two classes from competency, spouses pursuant to MCA § 13-1-5 and persons convicted of perjury or subornation of perjury pursuant to MCA § 13-1-11. Rule 601 was subsequently amended in 1990 to delete statutory references. Subsection (a) retains the substance of superceded M.C.A. § 13-1-5. Former Subsection (b) retained the substance of superceded M.C.A. § 13-1-11 as it pertained to persons convicted of perjury or subornation of perjury. In *Fuselier v. State*, 702 So. 2d 388, decided Oct. 23, 1997 the Mississippi Supreme Court amended the rule by abandoning the perjurer's incompetency rule, striking that subsection from the rule. A witness previously convicted of perjury or subornation of perjury is now competent as a witness and the fact of such a prior conviction will be available for impeachment of the witness under Rule 609(a)(2). Former subsection (c), now, subsection (b) reflects the substance of a prior amendment to Rule 601 made by the Mississippi Supreme Court in *Hudspeth v. State Highway Commission of Mississippi*, 534 So. 2d 210 (Miss. 1988). The Hudspeth amendment excepted from competency court appointed experts in eminent domain proceedings. The Hudspeth amendment, which was made retroactive to January 1, 1986, specifically referred to the provisions of then existing M.C.A. § 11-27-89. Subsection (e) (b) reflects the substance of the Hudspeth amendment but deletes any statutory references.

[Comment amended January 31, 1990; March 20, 1995, July 1, 1998.]

IT IS FURTHER ORDERED that such amendments shall be effective on July 1, 1998.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this, the _____ day of April, 1998.

FRED L. BANKS, JR., JUSTICE,

FOR THE COURT

SULLIVAN, P.J. WOULD DENY.

PITTMAN, P.J. NOT PARTICIPATING

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NO. 89-R -99002 SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter has come before the Court, en banc, on the Court's own motion for consideration of an amendment to the Comment to Rule 901(b)(6) of the Mississippi Rules of Evidence. It has been suggested to the Court that the reference in the Comment to *Acosta v. State*, 222 Miss. 426, 76 So. 2d 211 (1954) incorrectly characterizes the holding in that case, and the Court having considered the matter finds that the reference to that case should be deleted.

IT IS THEREFORE ORDERED that the Comment to Rule 901(b)(6) of the Mississippi Rules of Evidence be and the same is hereby amended by deleting from such Comment the following language:

This practice has been approved by the Mississippi court. See *Acosta v. State*, 222 Miss. 426, 76 So. 2d 211 (1954).

IT IS FURTHER ORDERED that such amendments shall be effective on July 1, 1998.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this, the _____ day of May, 1998.

WILLIAM L. WALLER, JR., JUSTICE,

FOR THE COURT

