



# Litigation Section

## The Mississippi Bar

### E-Newsletter

OCTOBER 2008

#### IN THIS

#### ISSUE:

- **Save the Date!!**
- **Election Day Upcoming**
- **Everything You Need to Know About Practice in the Northern District**
- **New Federal Rule of Evidence 502**
- **Litigation Section Executive Committee**
- **Public Law 110-322 110th Congress**

## Save the Date for CLE!!



The Litigation Section will sponsor an all day CLE on Friday, January 16, at the newly renovated Lafayette County Courthouse in Oxford. The trial advocacy seminar will feature a faculty of top trial attorneys demonstrating and discussing various trial techniques and strategies. The Litigation Section will donate proceeds from the seminar to the Mississippi Innocence Project. Please note the date and look for further details in the near future.

## Election Day Upcoming

On Tuesday, November 4, Mississippians will cast votes in several national, statewide and local elections. Included in these various races are several state court judicial elections. Many voters are confused about the positions under consideration and the candidates for those particular positions. In addition to exercising your right to vote, please assist in the process of educating non-attorneys about the candidates for particular judicial offices.

Mississippians will vote on four of the nine positions on the Mississippi Supreme Court:

District 1 (Central)  
Position No. 3  
Ceola James  
Jim Kitchens  
Jim Smith

District 2 (Southern)  
Position No. 2  
Oliver Diaz  
Randy 'Bubba' Pierce

District 3 (Northern)  
Position No. 1  
Gene Barton  
Ann Hannaford Lamar

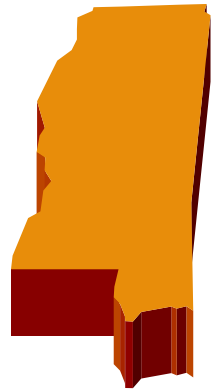
District 3 (Northern)  
Position No. 2  
David Chandler  
Charles 'Chuck' Easley

There are three current members of the Mississippi Court of Appeals running unopposed for re-election: Leslie D. King (District 2, Position No. 2), Larry E. Roberts (District 3, Position No. 1) and David M. Ishee (District 5, Position No. 2).

Finally, two circuit court positions are the subject of special elections to fill unexpired terms. James L. Roberts, Jr., is unopposed for District 1, Position No. 4. In District 17, Position No. 2, Jimmy McClure and Smith Murphey are the candidates.

# Everything You Need to Know About Practice in the Northern District

On September 5, the District and Magistrate Judges of the Northern District hosted a CLE Seminar at the Oxford Conference Center. You can find the materials distributed at the Seminar, "Practices and Preferences of District and Magistrate Judges of the Northern District of Mississippi," on the Litigation Section website by clicking [here](#). You should find these materials helpful when you next appear in the Northern District.



## New Federal Rule of Evidence 502

On September 19, President Bush signed into law a bill creating new Federal Rule of Evidence 502. The new rule has two primary purposes: (i) it resolves disputes concerning inadvertent disclosure and subject matter waiver, and (ii) it responds to complaints about the prohibitive litigation costs incurred in protecting against inadvertent disclosure. The new rule will apply to all cases filed after the date of enactment and, "in so far as is just and practicable," to all pending cases. You may find the new rule (P.L. 110-322) on page three (3) of this newsletter or on the Litigation Section website by clicking [here](#).

## Litigation Section Executive Committee:



**Cal Mayo, Chair**

**Kyle Moran, Vice-Chair**

**Grant Bennett, Secretary/Treasurer**

**Hon. Dan Jordan, Past Chair**

**Doug Minor, Executive Committee**

**Brooke Newman, Executive Committee**

**Ted Connell, Executive Committee**

**René Garner, Section Coordinator**

# Public Law 110—322 110th Congress

**PUBLIC LAW 110-322—SEPT. 19, 2008 -122 STAT. 3537**

**Public Law 110-322 110th Congress**

## **An Act**

To amend the Federal Rules of Evidence to address the waiver of the attorney client privilege and the work product doctrine.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER.

(a) IN GENERAL.—Article V of the Federal Rules of Evidence is amended by adding at the end the following:

“Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver “The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

“(a) DISCLOSURE MADE IN A FEDERAL PROCEEDING OR TO A FEDERAL OFFICE OR AGENCY; SCOPE OF A WAIVER.—When the disclosure is made in a Federal proceeding or to a Federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Federal or State proceeding only if:

“(1) the waiver is intentional;

“(2) the disclosed and undisclosed communications or information concern the same subject matter; and

“(3) they ought in fairness to be considered together.

“(b) INADVERTENT DISCLOSURE.—When made in a Federal proceeding or to a Federal office or agency, the disclosure does not operate as a waiver in a Federal or State proceeding if:

“(1) the disclosure is inadvertent;

“(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

“(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

“(c) DISCLOSURE MADE IN A STATE PROCEEDING.—When the disclosure is made in a State proceeding and is not the subject of a State-court order concerning waiver, the disclosure does not operate as a waiver in a Federal proceeding if the disclosure:

“(1) would not be a waiver under this rule if it had been made in a Federal proceeding; or

“(2) is not a waiver under the law of the State where the disclosure occurred.

“(d) CONTROLLING EFFECT OF A COURT ORDER.—A Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other Federal or State proceeding.

“(e) CONTROLLING EFFECT OF A PARTY AGREEMENT.—An agreement on the effect of disclosure in a Federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

“(f) CONTROLLING EFFECT OF THIS RULE.—Notwithstanding Rules 101 and 1101, this rule applies to State proceedings and to Federal court-annexed and Federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if State law provides the rule of decision.

“(g) DEFINITIONS.—In this rule:

“(1) ‘attorney-client privilege’ means the protection that applicable law provides for confidential attorney-client communications; and

“(2) ‘work-product protection’ means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.”

(b) TECHNICAL AND CONFORMING CHANGES.—The table of contents for the Federal Rules of Evidence is amended by inserting after the item relating to rule 501 the following:

“502. Attorney-client privilege and work-product doctrine; limitations on waiver.”

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply in all proceedings commenced after the date of enactment of this Act and, insofar as is just and practicable, in all proceedings pending on such date of enactment.

Approved September 19, 2008.