

Serial: **226124**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-BR-01531-SCT

RICHARD VAUGHN JOHNSON, JR.

v.

THE MISSISSIPPI BAR

EN BANC ORDER

¶1. Before the Court is the Motion for Reinstatement from Disability Inactive Status and for Referral to Complaint Tribunal filed by Richard Vaughn Johnson, Jr., and his counsel on November 3, 2017.¹ The Mississippi Bar filed a motion to dismiss on January 5, 2018, in which it argued, in part, that Johnson had failed to support his motion with evidence of his capacity to return to law practice. On April 8, 2018, this Court denied both Johnson's Motion for Reinstatement from Disability Inactive Status and the Bar's motion to dismiss. We found that Johnson and the Bar had not satisfied the procedures provided under then-current Mississippi Rules of Discipline 12 and 25 for a petition for reinstatement of an attorney

¹Johnson began disability inactive status by order filed March 7, 2008. A complaint tribunal placed Johnson on disability status while adjudicating consolidated bar complaint matters: 2007-B-2005 and 2008-B-171. The complaints were stayed indefinitely pending Johnson's reinstatement from disability status. The order appointed William P. Starks, II, as guardian *ad litem* for Johnson under then-current Mississippi Rule of Discipline 20. The order prohibited Johnson from practicing law until the time of his reinstatement under then-current Mississippi Rule of Discipline 25.

suspended for personal incapacity, and we remanded the matter for further proceedings. On March 13, 2019, the Bar filed its answer to Johnson’s motion and supports it, arguing that Johnson had met the requirements for reinstatement from disability inactive status. Johnson filed no response to the Bar’s answer. Also before the Court is the Bar’s Motion for Reimbursement of Costs and Expenses, filed June 4, 2019.

¶2. The Rules of Discipline for the Mississippi State Bar provide that “[t]he Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys” M.R.D. 1(a). “For purposes of administering the Court’s disciplinary jurisdiction,” Mississippi Rule of Discipline 3 “established and designated” certain entities of the Mississippi Bar to be “*agencies* of the Court.” M.R.D. 3 (emphasis added). Mississippi Rule of Discipline 3.1 provides that the “disciplinary agencies,” when “acting in the course of their disciplinary duties . . . shall be considered a special master of the Court.” M.R.D. 3.1. *See* M.R.C.P. 53 (governing the investigative powers of “masters of the court.”).

¶3. The applicable standards under which this Court reviews petitions for reinstatement follow:

It is well[]established that this Court has “exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys.” *In re Kelly*, 987 So. 2d 925, 928 (Miss. 2008) (quoting *In re Morrison*, 819 So. 2d 1181, 1183 (Miss. 2001)). This Court conducts a de novo review of the evidence in disciplinary matters, acting as triers of fact on a case-by-case basis. *In re Kelly*, 987 So. 2d at 928 (citing *In re Morrison*, 819 So. 2d at 1183). The main inquiry in determining whether or not to grant reinstatement is whether the petitioner has

rehabilitated himself. *In re Kelly*, 987 So. 2d at 929 (citing *In re Steele*, 722 So. 2d 662, 664 (Miss. 1998)). The petitioner bears the burden of proving by clear and convincing evidence that reinstatement is warranted based on the petitioner’s rehabilitation and requisite moral character. *In re Kelly*, 987 So. 2d at 929 (quoting *Burgin v. Miss. State Bar*, 453 So. 2d 689, 691 (Miss. 1984)).

Wong v. Miss. Bar, 5 So. 3d 369, 371-72 (Miss. 2008).

¶4. Mississippi Rule of Discipline 23² outlines the procedures for reinstatement following an attorney’s suspension because of personal incapacity to practice law:

Procedures for reinstatement of an attorney suspended because of personal incapacity to practice law shall be, insofar as is applicable, the same as the procedure for reinstatement of an attorney following suspension upon disciplinary grounds. The petition for reinstatement shall be filed with the Clerk of the Court, and a copy of said petition shall be served upon the Bar . . . Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation . . . [and] the Board of Bar Commissioners shall fully answer the petition. The Bar shall determine, based upon Complaint Counsel’s investigation, whether the Bar supports, or objects to, the attorney’s reinstatement. Upon filing of the Bar's answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

M.R.D. 23.

¶5. The procedure for reinstatement of an attorney following suspension on disciplinary grounds is governed by Rule 12, which states that “[n]o person disbarred or suspended for a period of six (6) months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court.” M.R.D. 12(a). The section of Rule 12 entitled “Procedure” requires the following:

²Former Mississippi Rule of Discipline 25 provided reinstatement procedures for an attorney suspended because of personal incapacity and governed Johnson’s requirements for reinstatement. Reinstatement from disability inactive status, as of July 1, 2019, now is governed by Mississippi Rule of Discipline 23.

Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation within thirty (30) days. Upon completion of the investigation . . . the Board of Bar Commissioners shall fully answer the petition. The Board shall determine, based upon Complaint Counsel’s investigation, whether the Bar supports, or objects to, the attorney’s reinstatement. Upon filing of the Bar’s answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

M.R.D. 12.8.

¶6. We previously held that none of those procedures appeared to have occurred in the present matter, and we ordered “[that] the Bar shall investigate Johnson’s claim that his competency has been restored, [that] it shall fully answer Johnson’s Motion for Reinstatement, and [that] the Bar shall appear at a hearing before this Court, should the Court decide that a hearing is necessary.” En Banc Order, *Johnson v. Miss. Bar*, No. 2017-BR-01531-SCT, at *5-6 (Miss. Aug. 9, 2018).

¶7. The Bar, based on this Court’s instruction, now avers that it has investigated Johnson and his claim of personal capacity and has answered Johnson’s motion under the applicable Rules of Discipline. Additionally, the Bar’s response contains the report of William P. Starks, II, Johnson’s appointed guardian *ad litem*, which this Court’s order also required. According to the Bar’s answer and the guardian *ad litem* report, Johnson has regained his personal capacity to practice law.

¶8. The Bar’s answer submits that “Mr. Johnson is in compliance with the requirements for reinstatement from Disability Inactive Status.” Because the Bar has answered the petition after conducting an investigation of Johnson’s claim that his competency has been restored,

this Court is empowered to review his application. Because there is sufficient “medical evidence, [the] Guardian Ad Litem report and [personal] testimony” regarding Johnson’s current fitness to practice law and rehabilitation and because Johnson avers that he has been sober more than ten years following his placement on disability inactive status, this Court finds that Johnson has shown by clear and convincing evidence that he possesses the personal capacity that is required for reinstatement from disability inactive status.

¶9. The Bar’s answer presents that because “Mr. Johnson’s capacity is sufficiently proven . . . the parties should be eligible to proceed with the stayed disciplinary matters.” The Bar has adduced satisfactory evidence to support a finding that Johnson is not incapacitated at present, and the parties have satisfied the requirements both for his reinstatement and for adjudication of the outstanding Bar complaints referenced in this Court’s order of August 9, 2018.

¶10. We grant Johnson’s Motion for Reinstatement from Disability Inactive Status and for Referral to Complaint Tribunal. Additionally, because both parties are in agreement regarding Johnson’s personal capacity, this Court finds that a hearing on the merits on the Motion for Reinstatement from Disability Inactive Status is not required.

¶11. We lift the stays on any and all pending Bar complaints against Richard Vaughn Johnson, Jr., so that a Complaint Tribunal may proceed with any pending adjudication(s).

¶12. This Court also orders that the guardian *ad litem* be discharged because his services no longer are required under Mississippi Rules of Discipline 17-23, owing to Johnson’s reinstatement from disability inactive status.

¶13. Also before the Court is the Bar’s request for reimbursement of actual costs and expenses incurred for the reinstatement matter. The motion specifies amounts for costs and expenses the Bar incurred during investigation. Under Mississippi Rule of Discipline 25(a),³ “[this] Court may assess costs incurred in the investigation, prosecution, and defense of any disciplinary matter as justice may require. Such costs and expenses shall include the actual and reasonably necessary expenses of the Bar” Under Mississippi Rule of Discipline 25(c), “[i]n reinstatement proceedings, in addition to any investigatory fee, the petitioner shall pay all court costs and expenses of any physical and psychiatric examinations required by the Court.” We order that Johnson shall reimburse the Bar for actual costs and expenses incurred in this matter in the amount of \$590.48.

¶14. IT IS THEREFORE ORDERED that the Motion for Reinstatement from Disability Inactive Status and for Referral to Complaint Tribunal filed by Richard Vaughn Johnson, Jr., is granted without further hearing, that Richard Vaughn Johnson, Jr., is hereby reinstated to the practice of law under the Mississippi Rules of Discipline, and that this matter is remanded to the Mississippi Bar for implementation of this order. All stays on any and all pending Bar complaints against Richard Vaughn Johnson, Jr., are lifted. The Bar shall proceed with any pending adjudication(s). Johnson shall refrain from the practice of law pending resolution of any and all outstanding Bar disciplinary matters. After all such matters have been concluded, Johnson may return to the practice of law subject to the disposition of the Bar complaints. We discharge William P. Starks, II, as guardian *ad litem* for Johnson. We order

³Formerly cited as Mississippi Rule of Discipline 27.

that Johnson shall reimburse the Bar for actual costs and expenses incurred in this matter in the amount of \$590.48.

SO ORDERED, this the 23rd day of July, 2019.

/s/ James W. Kitchens

JAMES W. KITCHENS, PRESIDING JUSTICE
FOR THE COURT