

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-BD-00629-SCT

THE MISSISSIPPI BAR

v.

DAVID CARTAN LOKER GIBBONS, JR.

ATTORNEY FOR APPELLANT
ATTORNEY FOR APPELLEE:

MELISSA SCOTT
ANDREW KILPATRICK, JR.
ASHLEY LANE
KRISTINE J. SWEARENGEN

NATURE OF THE CASE:
DISPOSITION:

CIVIL - BAR MATTERS
SUSPENDED FROM THE PRACTICE OF
LAW FOR A PERIOD OF ONE YEAR AND
ONE DAY, WITH ALL BUT SIX MONTHS
DEFERRED - 10/03/2019

MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

BEAM, JUSTICE, FOR THE COURT:

¶1. The Mississippi Bar filed a formal complaint against David Cartan Loker Gibbons, Jr., seeking reciprocal discipline under Rule 13 of the Rules of Discipline for the Mississippi State Bar after the Supreme Court of Louisiana suspended Gibbons from practicing law in Louisiana for one year and a day, with all but six months deferred. The Bar expresses no view as to the discipline to be imposed against Gibbons. After due consideration, we conclude that it is appropriate to impose reciprocal discipline equal to the suspension period imposed by the Louisiana Supreme Court.

FACTS AND PROCEDURAL HISTORY

¶2. By order dated January 8, 2019, the Louisiana Supreme Court suspended Gibbons from the practice of law in Louisiana for a period of one year and one day, with all but six months deferred. The Louisiana Supreme Court accepted the findings and recommendations of the Office of Disciplinary Counsel (ODC) for the Louisiana Attorney Disciplinary Board, as set forth in a joint petition for consent discipline submitted by Gibbons and the ODC.

¶3. According to the joint petition, the ODC received a complaint in March 2016 from Greater New Orleans Federal Credit Union (GNOFCU) against Gibbons. The complaint said that GNOFCU had retained Gibbons in 2006 to represent it in recovering money owed to it from various outstanding obligations, including car seizures and deficiency law suits.

¶4. The fee arrangement between GNOFCU and Gibbons as to the car seizures provided that Gibbons would be paid \$500 in legal fees, \$100 for each court hearing attended and reimbursement for court costs. As to the deficiency suits, GNOFCU and Gibbons agreed that Gibbons would be paid a percentage of any money he collected.

¶5. Gibbons was a member of a three-attorney law firm. Each attorney in the firm had his own clients and did minimal cooperative work with the other lawyers. Gibbons was the sole attorney who worked on GNOFCU matters. Gibbons had little or no administrative assistance.

¶6. The matters GNOFCU submitted to Gibbons were almost exclusively handled by email. There were no individual engagement letters for these matters, but Gibbons did not believe that he could object to working on any particular matter that GNOFCU referred to

him. Initially, approximately half of the matters GNOFCU sent to Gibbons involved car seizures. Gibbons was successful in the car-seizure matters and never fell behind in his professional obligations to GNOFCU.

¶7. Over time, GNOFCU began referring more deficiency suits to Gibbons and fewer car-seizure matters. The majority of the deficiency suits were relatively small unsecured loans that GNOFCU's in-house collection department had attempted unsuccessfully to collect. Gibbons estimated that his collection rate on the deficiency suits was approximately 10 percent of the principal value of the unsecured loans.

¶8. In early 2011, GNOFCU began asking Gibbons for updates on its accounts and requesting a copy of any judgment that Gibbons had obtained on GNOFCU's behalf.

¶9. Despite making promises, Gibbons failed to provide GNOFCU any updates about the information requested. GNOFCU, however, continued to refer deficiency suits to Gibbons via email.

¶10. Gibbons admitted that he became overwhelmed by the volume of deficiency loans that GNOFCU had referred to him. Gibbons said that, when contacted by GNOFCU, he always intended to organize an inventory of the collection cases and to bring all collection matters current because he was embarrassed by his inability to keep up with and to make progress on the cases. But because he had become overwhelmed, Gibbons was reticent to admit to GNOFCU that he had not kept up with the deficiency suits that GNOFCU continued to send him. During this period, Gibbons was suffering from anxiety and associated depression, which drove him to a deep emotional state of avoidance. He physically could not work on

the increasing number of deficiency suits. Gibbons sought professional help but was unable to overcome his anxiety.

¶11. In March 2015, GNOFCU hired other counsel to take over an account previously placed with Gibbons in order to collect proceeds from a May 2014 foreclosure obtained by GNOFCU in the amount of \$75,000. Despite Gibbons’s representations that he was working on the matter, the newly retained counsel learned that Gibbons had not performed any work to obtain the funds owed.

¶12. After learning of Gibbons’s failure to collect any of the foreclosure proceeds, GNOFCU retained additional counsel to handle all of the files that GNOFCU had sent to Gibbons. Through new counsel, GNOFCU made demands on Gibbons to provide it with the files and/or lists of accounts and statuses. Despite promises to return the files, Gibbons failed to provide to GNOFCU the requested files.

¶13. In June 2016, GNOFCU sued Gibbons for professional malpractice, claiming that it had incurred damages due to Gibbons’s failure to adequately represent GNOFCU in the deficiency suits.

¶14. Gibbons, through his counsel, turned over all of the GNOFCU files in his possession to GNOFCU. Afterwards, GNOFCU’s new counsel discovered that Gibbons, “on several occasions, had allowed certain matters to *prescribe* without filing any formal lawsuit on them.”¹

¶15. The parties ultimately settled the professional-malpractice lawsuit. According to the

¹ “Prescribe” means to fall outside the applicable prescription period. *See, e.g., In re Guidry*, 225 So. 3d 1169, 1173-74 (La. Ct. App. 2017).

joint petition for consent discipline submitted by Gibbons and the ODC to the Louisiana Supreme Court, the settlement fully rectified the damages incurred by GNOFCU. Gibbons admitted violating Rules 1.3, 1.4, 1.16, and 8.4(c) of the Louisiana Rules of Professional Conduct.

¶16. On January 8, 2019, the Louisiana Supreme Court accepted the joint petition for consent discipline and ordered that Gibbons be suspended from the practice of law in Louisiana for one year and a day, with all but six months deferred.

¶17. Gibbons was permitted to seek reinstatement on or after July 9, 2019, upon filing with the Louisiana Supreme Court and serving the ODC with an affidavit stating that he (1) has fully complied with the requirements of the suspension order, (2) has filed an attorney registration statement required by Louisiana Supreme Court Rule XIX, Rules for Lawyers Disciplinary Enforcement, Section 8C, and (3) has paid all currently owed bar dues, disciplinary administration and enforcement fees, filing fees, and disciplinary costs.

¶18. On April 5, 2019, the Mississippi Bar filed a formal complaint for reciprocal discipline against Gibbons under Rule 13 of the Rules of Discipline for the Mississippi State Bar. Gibbons filed a response, admitting each allegation listed in the complaint and admitting that his suspension in Louisiana constituted grounds for discipline by this Court. Gibbons further acknowledged that in determining reciprocal discipline, “the sanction imposed in this State generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction’s sanction.” *Miss. Bar v. Ishee*, 987 So. 2d 909, 911 (Miss. 2007) (citing *Miss.*

Bar v. Drungole, 913 So. 2d 963, 970 (Miss. 2005)).

¶19. Gibbons requests that this Court decrease the discipline from that imposed by the Louisiana Supreme Court due to the difference in the respective states' rules regarding reinstatement. Gibbons offers a number of mitigating factors for this Court to consider, in addition to the mitigating factors submitted by Gibbons in the joint petition to the Supreme Court of Louisiana.² These include the fact that Gibbons voluntarily suspended his formal law practice in August 2016 and has not practiced since that time. He was admitted to the Mississippi Bar in 1996 and has never received any disciplinary action. The conduct did not occur in Mississippi, and the Mississippi Bar's complaint does not allege that any Mississippians were harmed. Gibbons points out that he entered into a joint petition in Louisiana for actions done in Louisiana, which he never contested.

DISCUSSION

¶20. This Court has jurisdiction over Gibbons, a member of the Mississippi Bar since 1996, for disciplinary purposes under Rule 16 of the Rules of Discipline for the Mississippi State Bar—the Mississippi Bar's having served process on Gibbons, a Louisiana resident. Under Rule 13, when another jurisdiction imposes sanctions against an attorney, such sanctions constitute grounds for disciplinary action in this state.

² The joint petition submitted to the Supreme Court offered the following mitigating factors:

1. Personal or emotional problems,
2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings,
3. Remorse, and
4. Absence of a prior disciplinary record.

¶21. A sanction order from another jurisdiction serves as “conclusive evidence of the guilt of the offense or unprofessional conduct on which said sanction was ordered.” M.R.D. 13. “[T]his Court will not engage in further fact-finding when a sanction is imposed by another jurisdiction[.]” *Ishee*, 987 So. 2d at 911 (citing *Miss. Bar v. Shah*, 749 So. 2d 1047, 1049 (Miss. 1999)). The sole issue before this Court is the extent of final discipline to be imposed on Gibbons in this jurisdiction. M.R.D. 13.

¶22. As Gibbons acknowledges, “[i]n this Court’s application of the reciprocity doctrine, the sanction imposed in this State generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction’s sanction.” *Ishee*, 987 So. 2d at 911 (citing *Drungole*, 913 So. 2d at 970). But this Court “may impose sanctions less or more severe than those imposed by another jurisdiction.” *Id.* (citing *Miss. Bar v. Gardner*, 730 So. 2d 546, 547 (Miss. 1998)). An attorney subject to reciprocal discipline in this state “may ‘offer any mitigating factors which he thinks serve to diminish his culpability and therefore diminish the necessity for, or severity of, sanctions to be imposed by this Court.’” *Caldwell v. Miss. Bar*, 118 So. 3d 549, 553-54 (Miss. 2012) (quoting *Miss. Bar v. Strauss*, 601 So. 2d 840, 844 (Miss. 1992)).

¶23. In determining appropriate reciprocal discipline, this Court uses the same criteria used in Mississippi disciplinary cases:

(1) the nature of the misconduct involved; (2) the need to deter similar misconduct; (3) the preservation of the dignity and reputation of the profession; (4) protection of the public; (5) the sanctions imposed in similar cases; (6) the duty violated; (7) the lawyer’s mental state; (8) the actual or potential injury resulting from the misconduct; and (9) the existence of aggravating and/or mitigating factors.

Miss. Bar v. Hodges, 949 So. 2d 683, 686 (Miss. 2006) (citing *Miss. Bar v. Inserra*, 855 So. 2d 447, 450 (Miss. 2003)). “It is logical that the same criteria should also be considered when determining reciprocal discipline, although all may not apply.” *Id.* Each criterion need not be addressed separately, “so long as each is taken into consideration.” *Id.*

¶24. The Louisiana Supreme Court concluded that Gibbons “neglected a client’s legal matters, some of which prescribed, failed to communicate with his client and timely disclose his malpractice, and misled his client regarding the status of the matters.” This constituted a violation of Rules 1.3 (diligence), 1.4 (failure to communicate), 1.16 (obligations upon termination), and 8.4(c) (conduct involving misrepresentation) of the Louisiana Rules of Professional Conduct. The same rules are found in the Mississippi Rules of Professional Conduct. *See* M.R.P.C. 1.3, 1.4, 1.16, and 8.4(c).

¶25. Gibbons submits that if this Court is inclined to follow Louisiana’s decision, a period short of six months would be more appropriate to mirror the sanction imposed by Louisiana. In Louisiana, an attorney suspended for six months is not required to petition the court for reinstatement. Under Louisiana Supreme Court Rule XIX, Rules for Lawyers Disciplinary Enforcement, Section 24, “a suspended lawyer who has served a suspension period of more than one year, exclusive of any waivers or periods of deferral, shall be reinstated or readmitted only upon order of the court.” *See In re Thomas*, 38 So. 3d 248, 255 (La. 2010) (“[T]he deferred portion of a suspension should not be included in determining whether a suspension exceeds one year.”). Otherwise, the attorney need only submit an affidavit that the attorney has complied with the requirements mentioned above.

¶26. Under Rule 12 of the Mississippi Rules of Discipline, an attorney suspended for a period of six months or longer must petition this Court for reinstatement. M.R.D. 12(a).³ The attorney is also subject to the Multi-State Professional Responsibility Exam (MPRE), “if the Complaint Tribunal determines, on a case-by-case basis, that good cause exists to require” it. M.R.D. 12.5.⁴

¶27. This Court has the inherent authority either to reduce the suspension period to less than six months or to lift Rule 12(a)’s petition requirements. *See, e.g., Broome v. Miss. Bar*, 603 So. 2d 349, 354 (Miss. 1992).⁵ We decline to do either in this instance.

¶28. While Louisiana’s petition requirement differs from Mississippi’s Rule 12 petition requirement, Rule 12 governs the reciprocal discipline imposed here. Rule 12’s petition requirement is a consequence of the suspension period, not necessarily the sanction itself.

¶29. Further, we find no extraordinary circumstances that “compel, justify or support variance” from Louisiana’s six-month suspension order. *Ishee*, 987 So. 2d at 911. We acknowledge and accept the mitigating circumstances found by Louisiana in the matter. But

³ “No person disbarred or suspended for a period of six months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court.” M.R.D. 12(a).

⁴ Rule 12.5 has since been amended, effective July 1, 2019, to require anyone suspended for six months or longer to take the MPRE before reinstatement in Mississippi.

⁵ In *Broome*, this Court said that, “[e]ven though the Rules of Discipline provide for reinstatement through petition, we find that an order of automatic reinstatement is within the scope of this Court’s exclusive and inherent jurisdiction of attorney discipline matters.” *Broome v. Miss. Bar*, 603 So. 2d 349, 354 (Miss. 1992). At that time, Rule 12(a) allowed for reinstatement of an attorney suspended from the practice of law (no matter the duration) only on petition to this Court. *Id.* at 354.

we conclude that the aggravating circumstances are such that a six-month suspension is appropriate.

¶30. As noted, Rule 12.5 has since been amended, effective July 1, 2019, to require anyone suspended for six months or longer to take the MPRE prior to reinstatement in Mississippi. Under former Rule 12.5, the Complaint Tribunal determined whether or not good cause exists to require a suspended applicant to take the MPRE before reinstatement. We hold that former Rule 12.5 applies here. Given that no Complaint Tribunal was convened in this instance, or that no request was made by the Bar in its formal complaint that Gibbons be required take the MPRE, we hold that Gibbons is not required to take the MPRE prior to petitioning this Court for reinstatement.

CONCLUSION

¶31. We suspend Gibbons from the practice of law in Mississippi for a period of one year and one day, with all but six months deferred. We find that a retroactive suspension is appropriate and recognize that Gibbons's Louisiana suspension has been completed. Nevertheless, under Rule 12 of the Rules of Discipline for the Mississippi State Bar, Gibbons must petition this Court for reinstatement.

¶32. DAVID CARTAN LOKER GIBBONS, JR., IS SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE YEAR AND ONE DAY, WITH ALL BUT SIX MONTHS DEFERRED, RETROACTIVE TO JANUARY 8, 2019. THE COSTS AND EXPENSES OF THESE PROCEEDINGS ARE ASSESSED TO GIBBONS.

RANDOLPH, C. J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.