

Serial: 95190

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99010-SCT

FILED

***IN RE: RULES OF DISCIPLINE FOR
THE MISSISSIPPI BAR***

APR 18 2002
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

and

No. 89-R-99018

***IN RE: MISSISSIPPI RULES OF
PROFESSIONAL CONDUCT***

ORDER


This matter has come before the Court en banc on Petition to Amend the Rules of Discipline and Rules of Professional Conduct for The Mississippi Bar filed by The Mississippi Bar, seeking amendment of such rules as they relate to the Lawyers and Judges Assistance Committee. Having considered the petition, the Court finds that it should be granted to the extent set forth in this order and that Rules 3.2(g), 7, and 8, including Rule 8.6, of the Rules of Discipline for The Mississippi Bar and Rule 1.6 of The Mississippi Rules of Professional Conduct should be amended as set forth herein. The Court finds further that such amendments to the rules will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the Petition to Amend the Rules of Discipline and Rules of Professional Conduct for The Mississippi Bar filed by The Mississippi Bar is granted to the extent set forth herein; that Rules 3.2(g), 7, and 8, including Rule 8.6, of the

Rules of Discipline for The Mississippi Bar are amended as set forth in Exhibit "A" hereto, and that Rule 1.6 of the Mississippi Rules of Professional Conduct is amended as set forth in Exhibit "B" hereto."

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order on the minutes of this Court and that it be submitted to West Publishing Company for publication in the *Southern Reporter (Mississippi Edition)* and in the *Mississippi Rules of Court*.

SO ORDERED, this the 15th day of April, 2002.


WILLIAM L. WALLER, JR., JUSTICE,
FOR THE COURT

EASLEY, J., NOT PARTICIPATING

EXHIBIT "A" TO ORDER

AMENDMENTS TO RULES OF DISCIPLINE OF MISSISSIPPI BAR

RULE 3. DISCIPLINARY AGENCIES DESIGNATED

....

Procedure

....

(3.2) The agencies shall be composed of active practicing attorneys or judges of the Circuit, Chancery or County Courts who are members of the Bar of this State and shall further be constituted as follows:

....

(g) The Board of Commissioners of the Bar is authorized to establish a program of evaluation, intervention, treatment, monitoring and assistance for attorneys who suffer from chemical dependence or from physical, emotional, or mental disabilities that result from disease, disorder, trauma or age, and which impairs or tends to impair their ability to practice and their professional conduct. Such program shall be implemented by a Lawyers and Judges Assistance (LJA) Committee appointed by the President of the Bar; provided, no member of other disciplinary agencies shall be a member of the LJA Committee. Such Committee's creation shall in no way be construed to hinder, limit or otherwise affect any other disciplinary process. The LJA Committee shall be governed by appropriate regulations promulgated by the LJA Committee and approved by the Board of Commissioners of the Bar consistent with these rules. The LJA Committee shall have the following responsibilities, powers and immunities.

(1) Jurisdiction to investigate and evaluate allegations of attorney impairment arising from chemical dependency or physical, mental or emotional disability, which specifically includes, but is not limited to, conferring with any attorney who is the subject of such allegations as to such allegations, and making recommendations to such attorney, should it be determined that he or she in fact is impaired, of sources of remedial assistance;

(2) Perform similar functions as to cases referred to it by a disciplinary agency, reporting the results thereof to the referring agency;

(3) Except as noted in the these Rules, allegations and information furnished, results of investigations, conferences and the like shall be privileged

communication and held in the strictest confidence between the attorney involved and the LJA Committee; however, the status of compliance of an attorney who has been referred to the LJA Committee by a disciplinary agency as defined by Rule 3(c) or (d) of these rules with the terms and conditions imposed upon the attorney by the LJA Committee shall not be privileged communication for the purpose of the LJA Committee reporting such information to that disciplinary agency. The provisions of Rule 14 shall be applicable to the LJA Committee in its actions on allegations of impairment affecting attorneys. For good cause shown where the allegations of impairment are made by the attorney's family, the LJA Committee may, in its discretion, release such information to such person or persons as in its judgment will be in the best interest of the attorney involved;

(4) Should such investigation and evaluation clearly indicate that an attorney involved other than an attorney who has been referred to the LJA Committee by a disciplinary agency as defined by Rule 3(c) or (d) of these rules is impaired or engaging in conduct detrimental to the public, the courts, or the legal profession, the LJA Committee shall take such action, including, if warranted, notification of Complaint Counsel, as may appear appropriate to the LJA Committee;

(5) In regard to an attorney who has been referred to the LJA Committee by a disciplinary agency as defined by Rule 3(c) or (d) of these rules, should such investigation and evaluation indicate that the attorney involved is impaired or engaged in conduct detrimental to the public, the courts, or the legal profession, the LJA Committee shall take such action as may appear appropriate to the LJA Committee, including, but not limited to, notification of Complaint Counsel of the noncompliance by the attorney of terms and conditions imposed upon the attorney by the LJA Committee;

(6) ~~(5)~~ The LJA Committee may, under appropriate rules and regulations approved by the Board of Commissioners of the Bar, create action groups which may exercise any or all of the functions set forth herein to the extent provided in any such rules and regulations. Such action groups shall have all of the immunities provided for the LJA Committee.

[3.2(g) added February 9, 1988; 3.2 amended November 16, 1995; amended January 16, 1996; amended April 18, 2002.]

RULE 7.
COMMITTEE ON PROFESSIONAL RESPONSIBILITY
DUTIES AND POWERS

(a) The Committee shall function as a grand jury in matters of attorney discipline.

(b) Upon receipt of a complaint, Complaint Counsel's report and any response by the attorney, within a reasonable time the Committee shall:

(i) Dismiss any complaint without merit and retire the file; or

(ii) Direct or conduct further investigation if needed; or

(iii) Refer the matter to Complaint Counsel for filing and prosecution of a Formal Complaint; or

(iv) If investigation discloses a minor ethical violation or instance of relatively trivial misconduct or an isolated instance of a minor nature, then the committee shall be authorized to issue a letter of admonition, a private reprimand, or a public reprimand.

(v) In its discretion, and with the assent and accord of the attorney who is the subject of the complaint, in addition to any action taken by the Committee under (ii), (iii) or (iv) of this paragraph, notwithstanding the provisions of Rule 15(a) of these rules, delay final action and refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by the Lawyers and Judges Assistance Committee, treatment, monitoring and assistance.

(c) If issued, a letter of admonition, a private reprimand, or a public reprimand shall be sent to the accused attorney and a copy shall be sent to the complaining party. The accused attorney shall have a right within twenty days after receipt of the letter or reprimand to request in writing that a formal disciplinary proceeding be initiated against him to adjudicate the propriety of the conduct upon which the admonition or reprimand is based. If such request is timely made, the letter of admonition or reprimand shall be vacated, and the matter shall be processed by means of a formal complaint. An informal admonition shall not be used as a substitute for and shall not be considered, discipline. However, the fact, nature, and cause of such informal admonition may be disclosed in any subsequent disciplinary proceedings against the accused attorney for an informal admonition, private reprimand, or public reprimand and issued by the Committee.

[Amended November 16, 1995; amended April 18, 2002.]

(d) Referral to the Lawyers and Judges Assistance Committee may not be used as a substitute for, and may not be considered, discipline. However, notwithstanding the provisions of Rule 15(a) of these rules, the Committee, in its discretion, may delay any action under (ii), (iii) or (iv) of paragraph (b) of this rule provided that an attorney who is referred to the Lawyers and Judges Assistance Committee by the Committee complies with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee. If an attorney violates the terms and conditions imposed by the Lawyers and Judges Assistance Committee upon such attorney, notwithstanding the provisions of Rule (3.2)(g)(3) of these rules, the Lawyers and Judges Assistance Committee, in accordance with Rule (3.2)(g)(5) of these rules, shall report such failure to comply with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee, and upon receipt of such report, the Committee shall take such action under paragraph (b) which the Committee delayed but originally could have taken. In any notification to the complainant of the action or actions taken by the Committee, the Committee, in its discretion, may decide not to include notice of the Committee's referral of the attorney to the Lawyers and Judges Assistance Program.

[Amended November 16, 1995; amended April 18, 2002.]

....

RULE 8. COMPLAINT TRIBUNAL - POWERS AND DUTIES

(a) All formal complaints shall be filed with the Clerk of the court and the Court shall designate a Complaint Tribunal to hear and determine the matter. Hearings before Complaint Tribunals shall be as cases in chancery.

(b) At the conclusion of the hearing, upon majority vote, the tribunal shall render a written opinion incorporating a finding of fact and a judgment which may:

(i) Exonerate the accused attorney and dismiss the Formal Complaint;
or

(ii) Publicly or privately reprimand the attorney; or

(iii) Suspend the attorney with or without probation for a fixed period of time and may specify conditions precedent to reinstatement; or

(iv) Disbar the attorney; or

(v) In addition to any disposition authorized under this paragraph, with the assent and accord of the attorney who is the subject of the complaint, notwithstanding the provisions of Rule 15 of these rules, refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by such committee, treatment, monitoring and assistance.

[Amended April 18, 2002.]

Procedure

....

(8.6) Imposition of Discipline. No discipline shall be imposed except upon clear and convincing evidence. After final hearing on the merits, the opinion of the Tribunal may provide the following:

(i) Exonerate the accused attorney and dismiss the Formal Complaint.

(ii) Publicly or privately reprimand the attorney. If the Tribunal is of the opinion that a private reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Board of Commissioners of the Bar at the board meeting convening first after the reprimand becomes final or may have it forwarded to the attorney by the Clerk of the Court or by certified mail, return receipt requested, restricted delivery to addressee only. If the Tribunal is of the opinion that a Public Reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Circuit Court of the attorney's county of residence on the first day of a term convening next after the date the reprimand becomes final or on some other similar day when a maximum number of the Bar and the public are present. When a reprimand becomes public, a copy shall be given to the person filing the complaint, the Executive Director of the Bar and to the judges of the circuit and chancery districts of the attorney's county of residence. A Final Public Reprimand shall be read by the senior judge or his designee at the time herein indicated and placed upon the minutes of the Court.

(iii) Suspend the attorney with or without probation for a fixed period of time, and may specify conditions precedent to reinstatement. When such orders of suspension become public, they shall be placed upon the minutes of the chancery and circuit courts of the attorney's county of residence, and shall immediately become matters of public record.

(iv) Disbar the attorney. Such orders, when entered, shall be treated as provided in subparagraph (iii), above.

(v) In addition to (ii), (iii), or (iv), notwithstanding the provisions of Rule 15 of these rules, with the assent and accord of the attorney who is the subject of the complaint, refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by such committee, treatment, monitoring and assistance. The Tribunal may delay action under (ii), (iii) or (iv) of this Rule provided that an attorney who is referred to the Lawyers and Judges Assistance Committee by the Tribunal complies with the terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee. If an attorney violates the terms and conditions imposed by the Lawyers and Judges Assistance Committee upon such attorney, notwithstanding the provisions of Rule (3.2)(g)(3) of these rules, the Lawyers and Judges Assistance Committee, in accordance with Rule (3.2)(g)(5) of these rules shall report such failure to comply with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee, and upon receipt of such report, the Tribunal may take such action under paragraph (b) which the Tribunal delayed but originally could have taken.

[Amended November 16, 1995; amended April 18, 2002.]

EXHIBIT "B" TO ORDER

AMENDMENT TO MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information, which is confidential or privileged by law, or relating to representation of a client, which a lawyer has reason to believe may be detrimental to the client or which client has requested not be disclosed.

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(c) A lawyer who participates in an intervention on a lawyer, judge or law student by the Lawyers and Judges Assistance Committee shall not reveal any information learned through the intervention from or relating to the lawyer, judge or law student on whom the intervention is conducted except as may be permitted by the Rules of Discipline of the Mississippi Bar or required by law or court order.

(d) A lawyer shall reveal information to the Lawyers and Judges Assistance Committee in accordance with approved monitoring procedures of the Lawyers and Judges Assistance Committee relating to the status of compliance of a lawyer, judge or law student with the terms and conditions imposed upon the lawyer, judge or law student by the Lawyers and Judges Assistance Committee.

(e) (c) A lawyer may reveal such information to the extent required by law or court order.

[Amended June 23, 1994; amended April 18, 2002.]

Comment

[The Comment to Rule 1.6 remains unchanged.]