RULES OF DISCIPLINE FOR THE MISSISSIPPI STATE BAR

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RULES OF DISCIPLINE FOR THE
MISSISSIPPI STATE BAR
Effective January 1, 1984

PART ONE. RULES OF DISCIPLINE

GROUNDS FOR DISCIPLINE

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege of practicing law. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office or the Code of Professional Responsibility as now set forth or as hereafter amended, shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.

RULE 1. JURISDICTION

(a) The 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, and hereafter such proceedings shall be conducted in accordance with these rules. The court shall be the ultimate judge of matters arising under these rules, and from time to time the Court shall review these rules and amend them when necessary or desirable.

(b) Nothing contained in these rules shall be construed to deny to any other court such powers as may be necessary for that court to maintain control over practice and proceedings conducted before it; such as the power of contempt, nor to prohibit local bar associations from censuring, suspending, or expelling their members from membership in such local bar associations.

(c) Actions by other courts or by local bar associations are cumulative and in addition to the disciplinary jurisdiction of the Supreme Court of Mississippi and its disciplinary agencies. Actions by other courts and local bar associations shall not be binding or conclusive as to the Court or the Mississippi State Bar (the Bar), and any action taken by them shall be reported to the Bar, and when required by rule or by statute, to the Court.

(d) Nothing herein shall be construed to affect or limit the Court's power to regulate admission to the practice of law.

Procedure

(1.1) The jurisdiction of the Court shall extend to any resident or non-resident attorney who practices law or renders legal services in the State of Mississippi. Any nonresident, by

rendition of legal services in this state, shall be deemed to have appointed the Executive Director of the Bar as his agent for service of process or any notice required by these rules.

RULE 2. POWER AND ENFORCEMENT

(a) Each of the disciplinary agencies is hereby given such jurisdiction and lawful powers as are necessary to conduct a proper and speedy disposition of any complaint. The power to summons and examine witnesses under oath and to compel their attendance, or take or cause to be taken the deposition of witnesses, and to order the production of books, papers, records, and other documentary evidence necessary or material to the investigation or complaint, shall be co-equal to the powers exercisable by the courts of record of this State. All summonses or subpoenas shall be issued by the Clerk of the Court, and it shall be the duty of any person so summoned to appear and testify as in the writ commanded and to produce the books, papers, records, or other documentary evidence required. Summonses and subpoenas issued by the Clerk shall be served as in the Circuit Court.

(b) Any defiance of any summons or subpoenas so issued, or other extrajudicial conduct which shall inhibit, impede, or disrupt any of the above disciplinary agencies in the performance of the duties and in the exercise of the powers herein given shall be treated as contempt of Court and punishable accordingly.

Procedure

(2.1) The Clerk of the Court shall file all pleadings and issue all process. Summonses and subpoenas shall be served as in the Circuit Court; provided, such summonses and subpoenas shall avoid name identification of the accused attorney. Costs shall be paid by the party or person requesting the issuance.

RULE 3. DISCIPLINARY AGENCIES DESIGNATED

For purposes of administering the Court's disciplinary jurisdiction, the following entities are hereby established and designated as agencies of the Court.

(a) The Board of Commissioners of the Bar.

(b) The Executive Director of the Bar and Complaint Counsel.

(c) Committee on Professional Responsibility.

(d) The Complaint Tribunal and Panels appointed by the Court.

(e) Receivers designated by the Committee, a tribunal or the Court.

(f) Other attorneys who may from time to time be requested in writing by the President or First Vice-President of the Bar or by the Court to assist with an investigation or prosecution.

[Amended October 24, 1984; amended effective February 9, 1988; amended August 23, 1988.]

Procedure

(3.1) When acting in the course of their disciplinary duties, each of the disciplinary agencies shall be considered a special master of the Court.

(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:

(a) *Board of Commissioners*. The Board of Commissioners of the Bar is provided for by Section 73-3-107, Mississippi Code of 1972. The Board shall have the authority to employ and compensate competent persons to serve as Complaint Counsel, Assistant Complaint Counsel and non-lawyer staff who shall serve at the pleasure of the Board, either in full-time or part-time capacity, as the Board may from time to time deem necessary or advisable to effect the disciplinary procedures set forth herein.

(b) *Committee on Professional Responsibility*. The Committee on Professional Responsibility shall be composed of six (6) members appointed by the President of the Bar for terms of two (2) years except the terms of the initial members shall be staggered in one and two year terms and shall consist of two members from each of the Supreme Court Districts of the state. The Chairman and Vice Chairman of the Committee shall be designated by the President of the Bar.

(c) *Panels*. The Court shall appoint a panel of judges and attorneys from each Supreme Court District, and from those panels Complaint Tribunals shall be designated and constituted as the need arises. The panel members shall be in such numbers as the Court may deem appropriate. The term of office of all panel members shall be three (3) years, except the terms of the initial members shall be staggered in one, two and three year terms. No panel member shall serve more than two consecutive three year terms. Appointments may be terminated by the Court.

(d) *Complaint Tribunal*. All tribunal members shall be selected from the panels mentioned above. Each tribunal shall consist of two attorneys and one judge, and the judge member shall serve as the presiding judge of the tribunal. Whenever a tribunal member is unable to serve or a hearing will be unduly delayed because of the unavailability of a tribunal member, the presiding judge may select from the remaining panel members an attorney to serve in the place of the attorney appointed by the court.

(e) *Receivers*. If the presiding judge is unable to serve or the hearing shall be unduly delayed, the Chief Justice may appoint a new presiding judge from the judge members on the panels. All members of a tribunal designated to hear and determine a case as hereafter provide shall conclude the matter, the termination of a term of office of one or more of its members notwithstanding. All members of a Complaint Tribunal shall reside in a Chancery and Circuit District different from that within which the accused attorney resides. Tribunal members shall be selected on a rotating basis from the panels mentioned above

(f) *Other Attorneys*. The assistance of other attorneys shall be requested and utilized on a case-by-case basis, and they shall be deemed to act for the Court only when their assistance has been requested in writing by the President or the First Vice President of the Bar, such attorneys may be individuals or members of local professional responsibility committees or local complaint committees.

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

RULE 4. INITIATION AND FILING OF COMPLAINTS

(a) Any matter touching on the misconduct of an attorney licensed by the State of Mississippi or any attorney who renders or has rendered legal services in this state shall be called to the attention of Complaint Counsel either verbally or in writing.

(b) All attorneys, courts and their officers shall have the affirmative duty to notify Complaint Counsel of conduct of any attorney evincing unfitness for the practice of law or unprofessional or unethical conduct and any action taken by the Court.

(c) The committee on complaints shall not consider the matter until it has been reduced to writing.

(d) No complaint shall be considered by the Complaint Counsel or the Committee on Professional Responsibility unless received, discovered, or otherwise brought to their attention within three years after the date of discovery of the facts upon which the complaint is based. Complaints alleging violations of Rules 1.15, 8.1 and 8.4 (b) through (f) of the Rules of Professional Conduct shall not be covered by this limitation.

Procedure

(4.1) Complaint Counsel shall keep a docket of all written complaints, but same shall not be considered a grievance or charge touching the attorney's conduct until docketed with the Executive Director of the Bar by the Committee on Professional Responsibility. Until docketed with the Executive Director, the attorney may state that no complaint, grievance or charge has been filed against him. Complaints at any stage may be reported for statistical purposes.

(4.2) Written complaints shall contain:

(a) The name, mailing address, and phone number of the complainant; and

(b) The name and address of the accused attorney; and

(c) A statement of the facts of the complaint; and

(d) A list of witnesses, with addresses and phone numbers, if known; and

(e) Copies of any statement by the witnesses and documents in support of the statement of facts of the complaint.

(4.3) If a written complaint is found to be deficient, complaint counsel may return it to complainant with a statement of the deficiency. All such complaints shall be reported to the Committee on Professional Responsibility if the deficiency has not been cured within forty-five (45) days of the date on which the same was returned to the complaining person. The Committee on Professional Responsibility thereafter may act upon those matters as provided in Rule 7.
[Amended November 16, 1995.]

RULE 5. COMPLAINT COUNSEL - DUTIES AND POWERS

The Complaint Counsel shall investigate complaints, prosecute formal complaints, and discharge other duties assigned by the Board of Commissioners. Complaint Counsel shall conduct any investigation or investigatory hearing fairly and impartially and shall seek to elicit any and all facts which might be exculpatory or incriminatory of the accused attorney. All proceedings under these rules shall be expeditiously conducted to the end that no complainant be deprived of his right to a timely, fair and proper investigation of a complaint and that no attorney be subjected to unfair and unjust charges.

Procedure

(5.1) **General.** Upon receipt of a written complaint or information indicating probable cause, Complaint Counsel shall conduct an investigation, either with or without notice to the accused attorney, as in Counsel's discretion appears appropriate. Complaint Counsel may require a complaint to be in writing or may file a complaint on information and belief. Statements and evidence during an investigation shall be obtained in the most expeditious and efficient manner possible without a sacrifice of accuracy.

(5.2) **Investigations and Reports.** Complaint Counsel shall investigate and report to the Committee on Professional Responsibility within sixty (60) days from receipt of the written complaint. Upon completion of the investigation, a copy of the report, complaint and all evidence shall be served upon the attorney. In Complaint Counsel's discretion, the complaint and evidence may be served upon the attorney prior to submission of the report to the Committee on Professional Responsibility.

(5.3) Any responses by the attorney to the report shall be tendered to Complaint Counsel within fifteen (15) days of the mailing of the report.

(5.4) The Chair of the Committee on Professional Responsibility may enlarge the time for completion of an investigation and submission of Complaint Counsel's report or the attorney's responses.

(5.5) **Process During Investigations.** Subpoenas during investigations may be issued only upon approval of the Chair or a majority of the Committee on Professional Responsibility

(5.6) **Complaining Person or Witnesses.** The person signing the complaint is not a party to the proceedings, and the failure or refusal of that person or any witness to cooperate during the investigation shall not be cause for dismissal of the complaint or

termination of the investigation or proceedings before a complaint tribunal. Any person signing a complaint or any witness may be represented by counsel or may proceed as counsel for themselves during any investigation.

(5.7) **The Accused Attorney.** The accused attorney is a party to the proceedings, and after written notice of the investigation or complaint has been given to the attorney by Complaint Counsel, the accused attorney or his counsel may appear at any investigatory hearing conducted by complaint counsel.

(5.8) **The Investigatory Hearing**. An investigatory hearing in the discretion of complaint counsel or by direction of the Committee on Professional Responsibility may be conducted during the investigation and prior to the submission of complaint counsel's report to the committee. After written notice of the complaint or investigation is given to the attorney, such attorney or counsel therefor shall have the right to appear at any investigatory hearing for the purposes of examining or cross-examining all witnesses and for presenting witnesses and evidence on behalf of the attorney.
[Amended November 16, 1995.]

RULE 6. SUSPENSIONS AND DISBARMENTS BASED ON OTHER PROCEEDINGS

(a) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted in any court of any state or in any federal court, or enter a plea of guilty or a plea of nolo contendere therein, or tender a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision in state or federal law therein of any felony (other than manslaughter) or of any misdemeanor involving fraud, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction or order accepting or acknowledging the offer or tender of a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision in state or federal law shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order his immediate suspension from the practice of law.

(b) Upon reversal of the conviction or judgment that has resulted in the automatic suspension, the attorney may seek reinstatement pursuant to Rule 12. For purposes of these rules executive clemency or pardon shall not constitute reversal of the conviction and shall not bar or terminate disciplinary proceedings predicated upon such convictions or judgments. Dismissal of charges pursuant to the provision of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar state or federal statute shall have no effect upon disciplinary proceedings or sanctions predicated upon an entry, offer or tender of a plea of guilty or nolo contendere.

(c) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall have entered against him in any Court of any State or in any Federal Court a civil judgment in accordance with Section 11-49-3, Mississippi Code of 1972, or any other civil judgment based upon clear and convincing evidence of fraud, misrepresentation, dishonesty, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment, upon becoming final, shall be presented to the Court by Complaint Counsel and shall constitute sufficient, clear and convincing evidence of the facts necessary to support such judgment, and, unless successfully rebutted, the Court shall forthwith strike the name of the attorney and order his immediate suspension from the practice of law. This section shall not apply to Internal Revenue Code, Federal Communications Commission, Securities and Exchange Commission, Federal Trade Commission, and/or similar Federal Agency violations involving civil judgments and/or civil penalties, but nothing herein contained shall prohibit disciplinary prosecution for felony convictions based upon such violations.

(d) When time for appeal from judgment or conviction provided above expires or all appeals have been concluded without reversal, Complaint Counsel shall certify that result to

the Court, and the Court shall forthwith enter an order of disbarment.

(e) Upon conviction of manslaughter, Complaint Counsel shall immediately commence an investigation and where warranted shall, upon directive of the Committee on Professional Responsibility, present same to the Court for its consideration as herein set out.

(f) The judge of any court within this state shall have the affirmative duty to cause a certified copy of a conviction or judgment or order accepting or acknowledging the offer or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision of a state or federal law to be transmitted to Complaint Counsel.

[Amended to apply to attorney discipline cases arising after January 13, 1994; corrected March 21, 1994; amended November 16, 1995; Amended effective July 1, 2008, to provide that upon reversal of the conviction or judgment that has resulted in the automatic suspension, the attorney may seek reinstatement pursuant to Rule 12.]

Procedure

(6.1) A Formal Complaint, with a certified copy of the criminal judgment or conviction or order accepting or acknowledging the entry, offer, or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision of state or federal law attached, and a motion for indefinite suspension pending appeals shall be filed with the Court, upon which the attorney shall be automatically suspended subject to the right of such attorney to move for reconsideration upon a showing that the judgment or conviction has been reversed or a new trial is granted.

(6.2) Upon a showing that the time for all appeals has expired, or that all appeals have been concluded without reversal, the attorney shall be automatically disbarred.

(6.3) In a proceeding based upon a civil judgment, Complaint Counsel shall file a Formal Complaint, with a certified copy of the judgment attached, which shall constitute a prima facie case.

(6.4) **Matters of Public Record**. All proceedings brought pursuant to Rule 6 shall in all respects be matter of public record, Rule 15 notwithstanding.

[6.4 adopted effective August 15, 1988; 6.1 amended to apply to attorney discipline cases arising after January 13, 1994.]

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, not withstanding 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.

(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.]

Procedure

(7.1) **Dismissals.** Any complaint dismissed pursuant to Rule (b)(i) shall be neither reported to nor docketed by the Executive Director of the Bar, and such complaints shall be deemed expunged and not considered a charge touching upon the conduct of the attorney. Upon dismissal, the complaining person, the accused attorney and Complaint Counsel shall be given notice.

(7.2) **Referrals for Investigation.** Upon receipt of Complaint Counsel's report and any response by the attorney, the Committee may refer the matter for additional investigation and report with such instructions as may appear appropriate. The Committee shall periodically fix the costs and expenses incurred as of that date; provided, no cost shall actually be assessed unless a discipline is finally imposed. Upon referral for additional investigation and report, Complaint Counsel shall have not more than sixty (60) days from and after the date of receipt of the referral directive to conclude the additional investigation and report back to the Committee. A copy of that report and all evidence shall be served upon the accused attorney who shall have fifteen (15) days to respond. Within thirty (30) days, unless enlarged by the Chairman, the Committee on Professional Responsibility shall act upon the matter

(7.3) **Formal Complaints.** If, after conclusion of the investigation, the Committee is of the opinion that probable cause exists to believe the attorney is guilty of conduct warranting discipline, the matter shall be referred to Complaint Counsel for filing of a Formal Complaint for trial before a Complaint Tribunal. Within thirty (30) days of the date of the receipt of the directive, Complaint Counsel shall file the Formal Complaint with the Clerk of the Court with a certificate of costs incurred to date.

(7.4) **Complaints Docketed by the Executive Director.** Formal Complaints shall be docketed by the Executive Director and shall not be expunged except on order of a Complaint Tribunal of the Court.

[Amended November 16, 1995.]

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.

_____**(c)** The Complaint Tribunal shall have the power to enjoin violations under the

Mississippi Rules of Professional Conduct.

[Amended April 18, 2002; amended effective September 1, 2003, suspended by Order of August 8, 2003, reinstated effective October 1, 2004.]

Procedure

(8.1) Within ten (10) days following the designation of a Complaint Tribunal, the presiding judge shall establish a tentative schedule for discovery, motion hearings and rulings, trial and adjudication, all of which shall be completed within one hundred and eighty (180) days from the date of the designation of the Tribunal, unless extended by the Court on motion of either party for good cause shown.

(8.2) All Formal Complaints shall be prosecuted in the name of the Bar by Complaint Counsel unless the President or First Vice-President of the Bar shall appoint another attorney or attorneys to assist or proceed in the place of Complaint Counsel.

(8.3) The Formal Complaint shall be served in accordance with the applicable Mississippi Rules of Civil Procedure.

(8.4) Unless an enlargement of time be granted by the presiding judge of the Complaint Tribunal, the attorney's answer shall be filed within twenty (20) days after a copy of the Formal Complaint is served.

(8.5) Trials shall be held in the attorney's county of residence for those attorneys residing in the State of Mississippi; provided, upon written waiver by the attorney or upon motion made by either party and order by the Tribunal, trial may be held elsewhere. Trials shall be held before the Mississippi Supreme Court or a Tribunal sitting in Hinds County for those attorneys residing outside the State of Mississippi. The presiding judge shall hear and determine all pre-trial motions and all non-dispositive motions and enter all appropriate orders. The tribunal may hold such pre-trial conferences as deemed appropriate. Trial upon the merits shall be held before the full tribunal and shall be held as expeditiously as possible consistent with due process.

(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 the senior judge's 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; amended effective September 1, 2003, suspended by Order of August 8, 2003, reinstated effective October 1, 2004.]

RULE 9. APPEALS

(a) Either the Bar or the accused attorney may, as a matter of right, appeal any final disposition of the Tribunal to the Court.

(b) Where the Tribunal's final disposition is made upon a nolo contendere plea, an admission or an irrevocable resignation, the extent or absence of discipline shall be the sole question presented by an appeal.

Procedure

(9.1) Who May Take an Appeal. Either the Board or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law.

(9.2) Taking an Appeal. Any notice of appeal shall be filed and served on all opposing counsel within thirty (30) days of the date on which the Tribunal's judgment was filed with the Clerk of the Court and by paying within that time, all sums assessed as costs and expenses. Failure to give notice within that time or failure to pay the costs and expenses assessed, or failure to pay any costs due the Clerk of Court, shall be grounds for dismissal, notice and payment within the time provided being jurisdictional for any appeal. Otherwise, appeals shall be taken as in other civil cases.

(9.3) Distribution of Opinion and Judgment and Supersedeas. No private reprimand shall issue within thirty (30) days provided for taking an appeal or until the Court has disposed of any appeal, and an appeal duly perfected, as provided above, from a judgment of the tribunal imposing discipline of suspension for not more than six months shall operate as supersedeas except for making public the imposition of such public discipline or as provided in Rules 6(a) and 10, and the accused attorney shall be permitted to continue the practice of law until such time as the Court disposes of the appeal. In appeals from judgments imposing discipline of six months or more and those imposing disbarment, supersedeas shall be within the sound discretion of the Tribunal, subject to review by this Court, upon application of the accused attorney made within thirty days of the entry of the judgment. In ruling upon such application, the Tribunal shall state the reasons for its action. A motion for a stay of the judgment or the vacating of a stay granted by the Tribunal may be made to this Court or to a justice of this Court, but the motion shall show that the application to the Tribunal for relief sought is not practicable, or that the Tribunal has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the Tribunal for its action. The motion shall also show the reasons for the relief requested and

the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. The applicant shall file an original and four (4) copies of the motion for stay and, if the motion is opposed, shall attach legible copies of the documents specified in M.R.A.P. 8(e) for appeals under those rules.

Any stay may be conditioned upon giving bond as may be found appropriate by the Tribunal in the first instance or this Court upon review. Such bonds may be enforced by a motion in this Court without the necessity of an independent action. The motion for satisfaction of the bond and notice of the motion shall be served upon the sureties if their addresses are known.

In no event shall a stay be granted in cases where the accused attorney has defended asserting mental or physical impairment as an excuse for the behavior which is the subject of the complaint, except upon a clear and convincing showing of restoration to mental and physical health sufficient to assure the accused attorney's ability to perform his or her professional responsibilities.

(9.4) Extent of Appellate Review. Upon appeal the Court shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate. In so ruling, the Court shall not be bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is manifestly wrong. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate.

[Amended January 2, 1985; amended effective December 5, 1988; 9.3 amended effective as to appeals from complaint tribunals perfected from and after July 1, 1995; amended effective March 29, 2001.]

RULE 10. PLEAS OF NOLO CONTENDERE, ADMISSIONS AND IRREVOCABLE RESIGNATIONS

(a) Any time after the filing of the Formal Complaint, either the Complaint Tribunal or the Court may in its discretion, accept pleas of nolo contendere and admissions. Upon acceptance, the proceedings may terminate, but nothing contained herein shall prevent the further receipt of evidence for purposes of determining the final disposition to be made under Rule 8, above.

(b) Irrevocable resignations may be tendered to the Court or Complaint Tribunal at any time after Complaint Counsel's receipt of a complaint.

Procedure

(10.1) Submission and Effect. The entity to which pleas, admissions or irrevocable resignation are submitted shall direct what proceedings, if any, shall be had thereafter. If the Tribunal enters an opinion and judgment based upon a plea of nolo contendere, admission, or irrevocable resignation, the sole question to be presented by any appeal shall be the extent or absence of discipline.

(10.2) Pleas of Nolo Contendere - Contents. Such pleas need not address the factual matters alleged on the Formal Complaint. If accepted, a plea of nolo contendere shall be considered tantamount to proof of guilt on the matters charged for purposes of determining the discipline to be imposed or the disposition to be made.

(10.3) Admissions - Contents. Admissions shall fully address the factual matters alleged in the Formal Complaint, shall set out that the attorney could not defend himself on the matters admitted, and that the attorney submits to discipline on the matters admitted.

(10.4) Acceptance - Discretionary. Acceptance of a nolo contendere plea or an admission shall be discretionary. Such discretion shall include the right to accept a nolo contendere plea of the Formal Complaint and admission to the remainder.

(10.5) Irrevocable Resignation - Contents and Effect. An attorney may tender

an irrevocable resignation to either the Court or the Tribunal. Such a resignation shall acknowledge each and all disciplinary matters then pending, provide the docket number or numbers, state that the attorney does not desire to defend, and request permission to resign with prejudice from the Bar. Upon receipt of such a resignation, and any response that the Bar may elect to file, the disciplinary proceedings shall terminate and either the Court or the Tribunal shall enter its order accepting the resignation, revoking the attorney's license, and barring forever thereafter the attorney's right to seek reinstatement to the privilege of practicing law in this state. Such a resignation and order shall be considered disciplinary action, and the resignation shall be considered tantamount to the proof of guilt on the matter charged.

(10.6) The purpose of sections 10.1 through 10.5 is to provide a prompt, speedy, knowledgeable, and just disposition of any disciplinary matter.

RULE 11. EFFECT OF SUSPENSION, DISBARMENT, RESIGNATION, INCAPACITY OR DEATH

(a) An appeal shall operate as a supersedeas except as to any judgment of disbarment or suspension entered under Rule 6 or 10. A person disbarred or suspended shall not be permitted to practice law until restored to that privilege by the Court by way of an appeal or petition for reinstatement.

(b) An attorney suspended may be placed on probation or specified terms and may continue to practice law thereunder.

(c) A disbarred, suspended or resigned attorney shall: (1) notify all clients of his disbarment, suspension or resignation and his consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation; (2) notify each client involved in pending litigation or administrative proceedings and the attorney or attorneys for each adverse party in such proceedings, of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation; (3) advise each client promptly to substitute another attorney or attorneys in his place or to seek legal advice elsewhere; (4) notify all effected courts and agencies of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date thereof; and (5) give such other notice as the disciplinary agency last having jurisdiction may direct in the public interest.

(d) In the event of resignation, disbarment, or suspension, receivers may be appointed by the Committee on Complaints for the limited purpose of making an inventory and disposing of the attorney's files, cases and practice. Neither receivers nor their associates shall be permitted to become counsel for any parties in the cases and files inventoried, but they shall be permitted to take such actions as appear necessary to protect the interests of the clients with pending cases and the interests of the attorney. The Committee on Professional Responsibility shall receive and review reports from the receivers and shall monitor compliance with the terms of any probation, suspension or disbarment.

(e) Failure to comply with any order of discipline may be punished as a contempt and may constitute a separate ground for disciplinary action.

(f) Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, and no partner, or other responsible party capable of conducting the attorney's affairs is known to exist, the Court, or any judge having probate jurisdiction in the district in which the attorney maintains his practice, upon proper proof of the fact, will appoint an attorney or attorneys as receivers to inventory the files of the inactive, missing or deceased attorney and to take such actions as seems indicated to protect the interest of the inactive, missing or deceased attorney and his clients, and to generally carry out the functions described in Rule 11(d).

(g) Any attorney appointed receiver under this rule shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such file relates, except as necessary to carry out the orders of the appointing agency or court.

[Amended November 16, 1995.]

Procedure

(11.1) Notice to Be Given and Action to Be Taken. When an order of disbarment or an order of suspension for an indefinite period or a suspension without probation or a determination of incapacity or a resignation or proof of death is entered, the receivers, either with or without assistance from the suspended or disbarred person, shall immediately take such action as may be necessary to protect the interests of the clients and the attorney. This action shall include, but need not be limited to, giving notice that the attorney is disqualified to all clients in pending cases, all courts and agencies affected, all co-counsel in pending cases and all opposing counsel in pending matters, or, in the absence of such counsel, the opposing parties. The receivers shall offer to deliver, and where appropriate, shall deliver, to all clients being represented in pending matters, any papers or any other property to which the clients are entitled and shall notify the clients and any counsel representing them, of a suitable time and place where the papers or other property may be obtained. On motion of the attorney, his client, or other litigants, the Court or disciplinary agency last having jurisdiction of the attorney, shall have broad discretion in allowing the attorney to continue as the attorney of record in a particular case.

(11.2) Questions Pertaining to Closing a Practice. The receivers shall present to the agency last having jurisdiction of the disciplinary matter or the appropriate chancery court, any question upon which direction is needed. Nothing contained herein shall be

construed to limit the inherent and statutory powers of the chancery court.

(11.3) Reports by Receivers. Upon the closing of the practice, the receivers shall tender appropriate reports to the Committee on Professional Responsibility and to the entity which last had jurisdiction of the disciplinary matter. Where appropriate or necessary, interim reports shall be tendered.

(11.4) Law Partners - Continuance of Representation. If the client agrees, the law partners of a suspended or disbarred attorney may continue to represent any client affected by the suspension or disbarment, but notice thereof should be given as set out above.

(11.5) Costs and Expenses. All costs and expenses incurred by the receivers in the closing of the practice, except as normally payable by the client, shall be paid by the Bar. The Bar shall be entitled to recover of and from the suspended or disbarred attorney, expenses incurred in connection with the receivers.

[Amended November 16, 1995.]

RULE 12. REINSTATEMENT

(a) 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.

(b) Reinstatement to the practice of law following any other discipline shall be only upon proof of compliance with any such sanctions.

_____(c) An attorney who has been disbarred for conviction of a felony criminal offense which occurred after April 4, 2002, in a court of this state or any other state, or a court of the United States for any felony crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, the sale or distribution of a controlled substance, or an attempt, conspiracy or solicitation of another to commit such a crime, shall be ineligible for reinstatement to the practice of law.

[Amended effective August 12, 1992; amended April 4, 2002.]

Procedure

(12.1) Disbarments. The petition for reinstatement shall not be filed until three (3) years after the date the order of disbarment became final.

(12.2) Suspensions. A petition for reinstatement shall be required in all cases of suspension for a period of six months or more. In cases of suspension pending satisfaction of conditions precedent, reinstatement shall not be permitted except upon proof that the conditions have been met.

(12.3) Suspensions - Revocation of Probation. Probation may be revoked upon clear and convincing proof that the attorney has failed to meet the terms of the probation. It shall be the duty of the Committee on Professional Responsibility to monitor such suspensions with probation, to receive any reports which the attorney may be required to submit, and to take such action as may be appropriate in the circumstances.

(12.4) Suspensions - Time for Filing Petitions for Reinstatement. A suspended attorney shall not file a petition for reinstatement until the expiration of the period of suspension. In cases of suspension of six months or longer pending satisfaction of conditions precedent, the petition for reinstatement may be filed immediately upon the attorney's meeting these conditions.

(12.5) Examination Requirements. Subsequent to the time of eligibility for reinstatement of an attorney suspended for six months or longer, the petitioning attorney shall take the Multi-State Professional Responsibility Exam, as prepared by the National Conference of Bar Examiners, and achieve a scaled score of not less than 80, if the Complaint Tribunal determines, on a case-by-case basis, that good cause exists to require the applicant for reinstatement to take such test. A disbarred attorney, prior to reinstatement, shall be required to take and pass the complete bar examination administered by the Mississippi Board of Bar Admissions and achieve the score then required for admission to the bar of new attorneys as well as passing the Multi-State Professional Responsibility Exam with the score required for admission of new lawyers.

(12.6) Effect - Adverse Determination. If a petition for reinstatement is denied, no other petition shall be filed until one year after the date of the prior adverse decision.

(12.7) Contents of Reinstatement Petitions - Jurisdictional Matters. All reinstatement petitions shall be addressed to the Court, shall state the cause or causes for suspension or disbarment, give the names and current addresses of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct, the making of full amends and restitution, the reasons justifying reinstatement, and requisite moral character and legal learning to be reinstated to the privilege of practicing law. Upon filing, the petition shall be served on, and an investigatory fee of $500.00 shall be paid to the Bar, same to be in addition to any other sum due the Bar, or persons injured by the petitioner's improper conduct. The matters set out in this paragraph shall be jurisdictional.

(12.8) Board of Bar Commissioners. Upon receipt of the reinstatement petition, the Court shall allow the Board of Bar Commissioners thirty (30) days within which to conduct an investigation and fully answer the petition. After filing of pleadings or notice on behalf of the Bar, the proceedings shall continue, if necessary or desirable, as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

(12.9) Matter of Public Record. All petitions for reinstatement shall be matters of public record, Rule 15 notwithstanding.

[12.5 added effective April 9, 1987; 12.8 amended March 12, 1990; 12.2, 12.4 and 12.5 amended effective August 12, 1992; 12.3 amended November 16, 1995.]

RULE 13. DISCIPLINE IN ANOTHER JURISDICTION

When an attorney should be subjected to disciplinary sanctions in another jurisdiction, such sanction shall be grounds for disciplinary action in this state, and certification of such sanction by the appropriate authority of such jurisdiction to the Executive Director of the Bar or to the Court, shall be conclusive evidence of the guilt of the offense or unprofessional conduct on which said sanction was ordered, and it will not be necessary to prove the grounds for such offense in the disciplinary proceeding in this state. The sole issue to be determined in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed on the attorney, which may be less or more severe than the discipline imposed by the other jurisdiction.

Procedure

(13.1) Upon receipt by the Executive Director of a certified copy of disciplinary sanctions imposed by the bar or a court in another jurisdiction or by a Mississippi trial court or local bar association upon an attorney subject to these rules, the Executive Director shall immediately docket same as a complaint, charge or grievance and shall immediately forward the matter to Complaint Counsel. Complaint Counsel shall present the certified copies of the disciplinary action of the other court or Bar to the Court wherein the sole issue to be determined shall be the extent of final discipline to be imposed on the attorney in this state, which discipline may be less or more severe than the discipline imposed by the other jurisdiction.

[Amended effective April 5, 1994.]

RULE 14. IMMUNITY FROM CIVIL SUIT - RIGHT TO SUE

(a) All complaints filed, statements made and documents or other tangible things produced pursuant hereto shall be absolutely privileged, and no civil suit predicated therein may be instituted, and each person, firm, association or legal entity filing such a complaint shall be immune from any civil suit pending thereon. The officers of the Bar and all of the disciplinary agencies, and their assistants, staff, employees and receivers shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted in the course of any investigation, investigatory hearing, formal hearing or review proceedings held and conducted under these rules.

(b) In an action separate and distinct from the disciplinary proceedings, the attorney may, by petition filed with the clerk of the Court, seek a finding by the Court or its special master on the issue of malicious prosecution, abuse of process, malicious publication to persons not authorized to receive information pertaining to matters arising under these rules, slander or libel. If the Court finds or approves a finding by a special master that there appears to or may have been malicious prosecution, abuse of process, defamation of character, slander or libel, the court shall enter its order granting the right to sue, notwithstanding the immunity provided above. Such finding and right to sue shall constitute only a right to commence an action, not an adjudication as to whether or not there was, in fact, a waiver of the immunity provided above, and not a finding upon the merits of any action which the attorney may thereafter institute. No action shall be instituted prior to the issuance of the order herein provided. The statute of limitations provided by statute for applicable causes of action shall commence on the date the order is entered.

[Amended November 16, 1995.]

RULE 15. CONFIDENTIALITY OF MATTERS UNDER THESE RULES - PENALTIES

(a) All disciplinary agencies, their assistants, staff and employees, members of the bar, court reporters, clerks, and receivers are strictly enjoined to keep and maintain confidential, all things arising under these rules and all proceedings thereon. The attorney may make such public statement or disclosure as he desires. The period of confidentiality shall end, however, upon the happening of any of the following events: (i) upon the accused attorney making any public statement or disclosure about a proceeding under these rules; or (ii) a formal complaint under these rules is filed with the clerk of the Mississippi Supreme Court.

(b) Disciplinary agencies under these rules shall have authority to share information with law enforcement officials concerning any alleged violation of any federal or state criminal laws by an attorney.

(c) These rules shall not prohibit any complainant, the accused attorney, or any witnesses from discussing publicly the existence of the proceeding under these rules or from disclosing any information relating thereto, including the disclosing of any documents involved in the disciplinary proceeding.

(d) Statements made pursuant to Rule 15(c), in whatever form or by whatever means, outside the disciplinary process shall not enjoy the immunity provided in Rule 14.

[Amended November 16, 1995.]

RULE 16. JURISDICTION OF NON-RESIDENT ATTORNEYS - NOTICE - SERVICE

(a) The acceptance by a non-resident attorney of the rights and privileges of the practice of law within this state, as evidenced by his practice of law in this state, shall be deemed equivalent to an appointment by such non-resident attorney to the Executive Director of the Bar to be his true and lawful attorney, upon whom may be served all process, summons or notice of any and all proceedings against him instituted pursuant to and conducted under these rules. Acceptance of such rights and privileges and the practice of law by any such non-resident attorney in this state shall be the signification of his agreement that any such process, summons or notice against him which is so served shall have the same legal force and validity as if served personally.

(b) Notice of the service of such process, summons, or notice, together with a copy of any complaint or charge, shall be mailed forthwith by the Executive Director by United States certified or registered mail, return receipt requested, restricted for delivery to addressee only, and with postage pre-paid, to such non-resident attorney at his last known address.

(c) When such process, summons or notice is served as herein provided, and return receipt or refusal is filed, it shall be deemed sufficient to give to the Court and its disciplinary agencies provided for herein, jurisdiction over said non-resident attorney for the purpose of investigating and finally determining any complaint or charge touching upon the professional conduct or conduct evincing unfitness for the practice of law or the personal incapacity to practice law of such non-resident attorney.

PART TWO. PERSONAL INCAPACITY

RULE 17. PERSONAL INCAPACITY - MEANING OF TERM "PERSONALLY INCAPABLE" OF PRACTICING LAW

For purposes of Rules 17 through 25, the term "personally incapable" of practicing law shall include (a) suffering from mental or physical illness of such nature as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competency requisite for the proper practice of law; or (b) habitual use of alcoholic beverages, or liquids of any alcoholic content, hallucinogens, sedatives, drugs, narcotics or other mentally or physically disabling substance of any character whatsoever to any extent which impairs or tends to impair the ability to conduct efficiently and properly, the affairs undertaken for a client in the practice of law.

RULE 18. PERSONAL INCAPACITY - DISABILITY INACTIVE STATUS

Whenever it has been determined that any attorney subject to the disciplinary jurisdiction of the Court is personally incapable of practicing law, he shall be transferred to disability inactive status and not permitted to practice law until further order from the Court.

RULE 19. PERSONAL INCAPACITY - PROCEEDINGS - CIRCUMSTANCES SHOWING EXISTENCE OF CONDITION

Proceedings, including appeals, to determine whether an attorney is personally incapable of practicing law shall be instituted and conducted in the same manner and upon the same procedure as disciplinary proceedings, except as otherwise set out in Rules 17 through 25. In addition to, and without exclusion of any other circumstances, cause to believe that an attorney may be personally incapable of practicing law shall exist whenever information is received that such member (a) has interposed successfully a defense of mental incompetence to secure abatement of or to defeat an adverse determination in a disciplinary proceeding brought against him in any tribunal in any jurisdiction, (b) has defended, upon like grounds, a suit brought against him in any tribunal in any jurisdiction, (c) has been judicially declared incompetent, or (d) has been legally committed to an institution for the treatment of mental illness.

RULE 20. PERSONAL INCAPACITY - REPRESENTATION BY COUNSEL - GUARDIAN

In proceedings under Rules 17-25, the attorney shall be entitled to representation by counsel. An attorney who has been declared mentally incompetent, judicially, or who has been committed, judicially, to an institution for the treatment of the mentally ill shall be defended by his legally appointed guardian or guardian ad litem, if any; if a guardian or guardian ad litem has not been appointed, the Court or Tribunal shall appoint a guardian ad litem. The same procedure shall apply to an attorney who has asserted his incompetence, or whose incompetence to defend becomes apparent during the proceedings. In all cases, counsel previously selected by the attorney will be appointed guardian ad litem, absent clear and compelling reasons to the contrary.

RULE 21. PERSONAL INCAPACITY - SERVICE ON ATTORNEY WHO HAS BEEN COMMITTED OR DECLARED INCOMPETENT

Service of process or notice to an attorney who has been committed or declared incompetent shall be accomplished in the same manner as that for process on incompetents in proceedings in the chancery court of Mississippi. After the appointment of a guardian ad litem, notice shall be served upon said guardian ad litem.

RULE 22. PERSONAL INCAPACITY - SUFFICIENCY AS EVIDENCE, OF COURT ORDER OF INCOMPETENCE OR COMMITMENT

A certified copy of the court order declaring an attorney mentally incompetent, or an order of commitment if he has been committed to an institution for the mentally incompetent, shall constitute sufficient evidence that said attorney is personally incapable of practicing law, if such is not successfully rebutted.

RULE 23. PERSONAL INCAPACITY - MENTAL EXAMINATION AND REPORTS

In any proceeding where mental incompetency is an issue, the attorney may be

required to submit to a mental examination by one or more practicing psychiatrists selected by the Complaint Tribunal after its designation, or the Court. Reports of physicians regarding the mental condition of an attorney may be received as probative evidence, if the physicians are available for cross-examination.

RULE 24. PERSONAL INCAPACITY - JUDGMENT

If a Tribunal or the Court finds an attorney personally incapable of practicing law, the Court or Tribunal shall enter an order placing the attorney on disability inactive status, and the attorney shall not be permitted to practice law until restored to the privileges by order of the Court.

RULE 25. PERSONAL INCAPACITY - REINSTATEMENT PROCEDURES

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, and it shall be under a duty to investigate the matter, respond to the petition and appear at the hearing. The petitioner shall be required to supply such supporting proof of personal capacity as may be necessary and, in addition, the attorney may be required to submit to examinations by physicians or psychiatrists selected by the Court. If satisfied that the attorney has regained his capacity to practice law, the Court may reinstate the petitioner to the practice of law and enter judgment accordingly; provided, however, no judgment of reinstatement shall be entered by default or on an ex parte basis, and in all cases the Court shall hear the Bar. A filing fee of two hundred fifty dollars ($250.00) to defray the expense of investigating the matter shall be paid the Bar upon the filing of each petition for reinstatement, and any petition for reinstatement subsequent to the initial petition shall not be filed within six (6) months from the date of an adverse determination of any prior petition.

PART THREE. MISCELLANEOUS

RULE 26. TIME - GENERALLY NOT JURISDICTIONAL

References to time within these rules and procedural sections are directory and not jurisdictional. Time limitations are administrative, not jurisdictional; however, the time for

filing appeals or seeking reinstatement shall be jurisdictional. Failure to observe directory time interval may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

RULE 27. COSTS AND EXPENSES

(a) A Tribunal or the 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, excluding Complaint Counsel's time.

(b) An attorney exonerated of the charge may recover from the Bar any sums actually paid to the Bar and costs paid to the Clerk of the Court or for service of process in this State. The attorney shall recover no other costs or expenses.

(c) In reinstatement proceedings, in addition to any investigatory fee, the petitioner shall pay all court costs and expenses of any physical or psychiatric examinations required by the Court.

RULE 28. PRESERVATION OF EVIDENCE

Proceedings to preserve evidence may be initiated by complaint counsel at any time independently of pleas of guilty, pleas of nolo contendere, convictions, or imposition of discipline in any jurisdiction.

RULE 29. REPEALER AND SEVERABILITY

(a) From and after the adoption of these rules, all other rules or statutes pertaining to attorney disciplinary proceedings shall be superseded by these rules.

(b) If any of these rules or sections, or any part thereof, are declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining parts thereof shall be in no manner affected thereby but shall remain in full force and effect. Unless the contrary intent shall clearly appear in every amendment hereinafter

made, each and every amendment made hereafter shall be read and construed as though the provisions hereof form an integral part of such amendments, whether expressly set out therein or not.

[Amended effective December 5, 1988.]