

Serial: 194547

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99010-SCT

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

**ORDER**

This matter is before the Court en banc on the Petition to Amend Certain Rules of the Rules of Discipline for The Mississippi State Bar and to Adopt Rules to Separately Establish The Mississippi Lawyers and Judges Assistance Program. After due consideration, the Court finds that the Petition is well-taken and should be granted as set forth in Exhibits A and B.

IT IS THEREFORE ORDERED that the Rules of Discipline for the Mississippi State Bar are hereby amended as set forth in Exhibit A, and that the Rules of The Mississippi Lawyers and Judges Assistance Program are adopted as set forth in Exhibit B. This amendment and adoption are effective immediately.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Third Series, (Mississippi Edition)*.

SO ORDERED, this the 8 day of January, 2015.

/s/ Randy G. Pierce

RANDY GRANT PIERCE,  
JUSTICE

TO GRANT: ALL JUSTICES

## EXHIBIT A

### State Bar Discipline Rule 3

#### 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.
- ~~(g) Lawyers and Judges Assistance Committee of the Bar.~~

#### 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 provided 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.

~~(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 the 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) 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.~~

## **EXHIBIT B**

### **Proposed Rules of The Mississippi Lawyers and Judges Assistance Program**

#### **Rule 1. Authorization**

The Supreme Court of Mississippi (“the Court”) hereby establishes the Mississippi Lawyers and Judges Assistance Program (“LJAP”). The Court authorizes the Board of Commissioners of The Mississippi Bar (the Bar) to establish a program of intervention, referral for evaluation and treatment, and monitoring and assistance for attorneys, judges, and law students 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 law or to perform their judicial functions, impairs their professional conduct, or impairs or could impair their admission to the practice of law.

Such program shall be implemented by a Lawyers and Judges Assistance Program (LJAP) Committee appointed by the President of the Bar; provided, no member of any disciplinary agencies shall be a member of the LJAP Committee. Such Committee’s creation shall in no way be construed to hinder, limit, or otherwise affect any disciplinary process or Bar Admission process.

The LJAP Committee shall be governed by appropriate regulations promulgated by the LJAP Committee and approved by the Board of Commissioners of the Bar consistent with these Rules.

The LJAP Committee shall be governed by 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 LJAP Committee.

#### **Rule 2. Powers and Duties**

- (a) The LJAP shall have jurisdiction to confidentially evaluate reports of impairment arising from chemical dependency or physical, mental, or emotional disability which are self reported by any attorney, judge, or law student. Evaluation specifically includes, but is not limited to, conferring with any attorney, judge, or law student who self reports such allegations and making recommendations to such attorney, judge, or law student, should it be determined that he or she is in fact impaired, of sources of remedial assistance.

- (b) The LJAP Committee shall have jurisdiction to confidentially evaluate reports or allegations of attorney, judge, or law student impairment arising from chemical dependency or physical, mental, or emotional disability if the attorney, judge, or law student is referred to the LJAP Committee by a law firm, attorney, friend, family member, client, judge, law school professor, law school dean, law school staff, or member of the general public. Evaluation shall specifically include, but is not limited to, confidentially conferring with any attorney, judge, or law student who is referred and making recommendations to such attorney, judge, or law student, should it be determined that he or she is in fact impaired, of sources of remedial assistance.
- (c) The LJAP Committee shall have jurisdiction to confidentially evaluate, to refer for evaluation and treatment, and to monitor an attorney or judge who is referred to the LJAP Committee by a court, a designated attorney disciplinary agent or a judicial disciplinary agency regarding reports or allegations of impairment arising from chemical dependency or physical, mental, or emotional disability. The LJAP Committee shall report the results of the evaluation, treatment, monitoring, and compliance of the attorney or judge to the court or referring disciplinary agency in the time and manner directed by the court or referring disciplinary agency.
- (d) The LJAP Committee shall have jurisdiction to confidentially evaluate, to refer for evaluation and treatment, and to monitor a law student applying for admission to the Mississippi Bar if the law student is referred to the LJAP Committee by the Court or by the Mississippi Board of Bar Admissions regarding reports or allegations of impairment arising from chemical dependency or physical, mental, or emotional disability. The LJAP Committee shall report the results of the evaluation, treatment, monitoring, and compliance to the Court or the Mississippi Board of Bar Admissions in the time and manner directed by the Court or the Mississippi Board of Bar Admissions.
- (e) The LJAP Committee may, under appropriate rules and regulations approved by the Board of Commissioners of the Bar, provide assistance through volunteer attorneys or judges to an attorney or judge who is temporarily unable to proceed due to chemical dependency or physical, mental, or emotional disability. The assistance provided shall be only of a procedural nature to effect continuances, postponements, extensions of time, notifications to clients, courts, other attorneys involved in a matter or matters, or other procedural tasks necessary to protect the interests of clients, the legal system, and the profession. Volunteer attorneys and judges who provide such assistance through the LJAP Committee and to the extent provided in any such rules and regulations shall have all of the immunities provided for the LJAP Committee.

**Rule 3. Protection of the Public, the Legal System, the Profession**

When contacted by the LJAP regarding an attorney or judge who is participating with the LJAP and is engaged in treatment and rehabilitation, courts, judges, and attorneys are encouraged to accommodate requests from the LJAP for continuances, postponements, extensions of time, notification to clients, courts, and other attorneys involved in a matter or matters, or other procedural tasks in order to protect the interests of clients, the legal system, and the profession.

**Rule 4. Confidentiality**

Except as noted in these Rules, reports; allegations and information furnished; results of referrals, conferences, evaluation and treatment reports, and monitoring reports; and information learned through assistance provided by the LJAP Committee, its action groups, or its volunteer attorneys, shall be privileged communication and held in the strictest confidence between the attorney, judge, or law student involved, and the LJAP Committee. However, the status of compliance of an attorney, judge, or law student who has been referred to the LJAP Committee by the Court, a designated attorney disciplinary agent, a judicial disciplinary agency, or the Mississippi Board of Bar Admissions with the terms and conditions imposed upon the attorney, judge, or law student by the LJAP Committee shall not be privileged communication for the purpose of the LJAP Committee reporting such information to the Court, the referring disciplinary agency, or the Mississippi Board of Bar Admissions. For good cause shown, where the allegations of impairment are made by the family of the attorney, judge, or law student, the LJAP Committee may, in its discretion, release such information to immediate family members as in its judgment will be in the best interest of the attorney, judge, or law student involved.

**Rule 5. Immunity**

The LJAP, the LJAP Committee, the LJAP officers, directors, staff, assistants, employees, monitors, action groups, and volunteer attorneys, in their actions regarding reports or allegations of impairment affecting attorneys, judges, and law students, 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 during the course of any evaluation, monitoring, hearing, formal hearing, or proceedings arising from the LJAP Committee's work under these Rules.

Rule 8.3, Mississippi Rules of Professional Conduct, shall not require disclosure of information otherwise protected by Rule 1.6, Mississippi Rules of Professional Conduct, or information gained by an attorney or judge while participating in the LJAP.