

Serial: **225710**

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 89-R-99010-SCT**

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

**ORDER**

Before the Court en banc is the Amended Petition to Amend Certain Rules of the Rules of Discipline for the Mississippi State Bar. After due consideration, the Court finds the petition should be granted in part as set forth in Exhibit A. The Court further finds that the petition should remain pending before the Court.

IT IS THEREFORE ORDERED that the Amended Petition to Amend Certain Rules of the Rules of Discipline for the Mississippi State Bar is hereby granted in part as set forth in Exhibit A. These amendments are effective on July 1, 2019.

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 13th day of May, 2019.

/s/ Leslie D. King

LESLIE D. KING, PRESIDING JUSTICE

ALL JUSTICES AGREE TO GRANT.

## **Exhibit A**

### **Rule 12. Reinstatement**

- (a)** No person disbarred or suspended for a period of six (6) months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court.
- (b)** Reinstatement to the practice of law following any suspension shall be only upon proof of compliance with any such sanctions.
- (c)** Reinstatement to the practice of law following an attorney's transfer to disability inactive status is governed by Rule 23 of these Rules.
- (d)** An attorney who has been disbarred for conviction of a felony criminal offense which conviction 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.
- (e)** An attorney who has been disbarred based on an underlying civil judgment pursuant to Rule 6(c) and (d) of these Rules shall be ineligible for reinstatement to the practice of law.

### **Procedure**

**(12.1) Disbarments.** The petition for reinstatement shall not be filed until five (5) 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 (6) 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 Complaint Counsel 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 and all conditions precedent are met.

**(12.5) Examination Requirements.** No sooner than six (6) months prior 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 the score required for admission of new attorneys to the Bar. No sooner than six (6) months prior to the time of eligibility for reinstatement, a disbarred attorney shall be required to take and pass the complete Bar examination administered by the Mississippi Board of Bar Admissions and achieve the score required for admission of new attorneys to the Bar and the Multi-State Professional Responsibility Exam with the score required for admission of new attorneys to the Bar.

**(12.6) Effect - Adverse Determination.** If a petition for reinstatement is denied or otherwise dismissed, no other petition shall be filed until one (1) year after the date of the prior adverse decision.

**(12.7) Contents of Reinstatement Petitions.** 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 or other harm due to the improper conduct, demonstrate the making of full amends and restitution, give specific reasons justifying reinstatement, and discuss in detail the attorney's rehabilitation of the requisite moral character and legal learning to be reinstated to the privilege of practicing law. Upon filing, the petition shall be served upon the Bar, and an investigatory fee of \$1,000.00 shall be paid to the Bar, in addition to any other sum due the Bar. The matters set out in this paragraph are mandatory for inclusion in the reinstatement petition.

**(12.8) Board of Commissioners for the Bar.** Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation within thirty (30) days. Upon completion of the investigation or within one hundred twenty (120) days from the commencement of the investigation, whichever occurs first, the Board of Bar Commissioners shall fully answer the petition. The Board shall determine, based upon Complaint Counsel's investigation, whether the Bar supports, or objects to, the attorney's reinstatement. Upon filing of the Bar's answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

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

**Rule 13. Reciprocal Discipline**

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in the State of Mississippi shall forthwith, but no later than 15 days upon the imposition of such discipline, provide Complaint Counsel a certified copy of the discipline. Failure to provide the certified copy forthwith shall, upon petition by Complaint Counsel, result in the immediate suspension of the attorney pending final resolution by the Court. The three (3) year limitations period provided in Rule 4(d) of these Rules shall not begin to run until the Bar has been given written notice of the discipline imposed by a Bar or court of another jurisdiction.

(b) Upon notification from any source that an attorney admitted to practice in the State of Mississippi has been disciplined in another jurisdiction, Complaint Counsel shall obtain a certified copy of the order and file it with the Court. A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the State of Mississippi. The sole issue to be determined in the disciplinary proceeding in the State of Mississippi shall be the extent of the final discipline to be imposed upon the attorney in this State, which may be more or less severe than the discipline imposed by the other jurisdiction.

**Procedure**

(13.1) Upon receipt by Complaint Counsel of a certified copy of an order that an attorney admitted to practice in the State of Mississippi has been disciplined in another jurisdiction, Complaint Counsel shall present certified copies to the Court by filing a complaint and serving it upon the attorney wherein the sole issue in a disciplinary case shall be the extent of final discipline to be imposed on the attorney in the State of Mississippi, which discipline may be less or more severe than the discipline imposed by the other jurisdiction. Service upon a resident attorney shall be made consistent with Mississippi Rule of Civil Procedure 4(c). Service upon a non-resident attorney shall be made consistent with Rule 16 of these Rules. The attorney may file an answer to the complaint within thirty (30) days of service of the complaint.

(13.2) The Court shall impose discipline upon the attorney unless the attorney demonstrates or the Court finds that it clearly appears upon the face of the record from which the discipline is predicated that:

- (a) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

- (b) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) The discipline imposed would result in grave injustice or be offensive to the public policy of the State of Mississippi.

(13.3) The burden shall be upon the attorney seeking different action in the State of Mississippi to demonstrate that the imposition of the same discipline is not appropriate.

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**PART TWO. PROCEEDINGS IN WHICH AN ATTORNEY IS DECLARED TO BE INCOMPETENT OR ALLEGED TO BE INCAPACITATED**

**Rule 17. Incapacity Defined**

For purposes of Rules 17 through 23, the term “incapacitated” 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. Involuntary Commitment or Adjudication of Incompetency**

If an attorney has been judicially declared incompetent, or is involuntarily committed on the grounds of incompetency or disability, the Court or a Complaint Tribunal, upon proper proof of the fact, shall enter an order immediately transferring the attorney to disability inactive status for an indefinite period until further order of the Court or a Complaint Tribunal. A copy of the order shall be lawfully served in accordance with Rule 4(d)(2)(B) or (C), Mississippi Rules of Civil Procedure. The judge of any court within this state shall have the affirmative duty to send a certified copy of the order declaring the attorney incompetent or involuntarily committing the attorney on the grounds of incompetency or disability to Complaint Counsel within ten (10) days after the entry of such order.

## **Rule 19. Inability to Properly Defend**

If an attorney in responding to allegations in the course of a formal disciplinary proceeding alleges an inability to assist in the defense due to mental or physical incapacity, the Court or a Complaint Tribunal shall immediately transfer the attorney to disability inactive status pending the proceedings to be held pursuant to Rule 20 of these Rules.

If the Court or a Complaint Tribunal determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the attorney retained on disability inactive status until the Court subsequently considers a petition for transfer of the attorney to active status.

If the Court or the Complaint Tribunal determines the claim of incapacity to defend to be invalid, the disciplinary proceeding shall resume.

The attorney bears the burden of proving inability to assist in the defense due to mental or physical incapacity.

## **Rule 20. Proceedings to Determine Incapacity and Reciprocal Disability Inactive Status**

(a) Information relating to an attorney's physical or mental condition which adversely affects the attorney's ability to practice law shall be investigated and where warranted, shall be the subject of formal proceedings to determine whether the attorney shall be transferred to disability inactive status. The hearings shall be conducted before a Complaint Tribunal in the same manner as disciplinary proceedings, including appeals, except that the hearings to determine incapacity shall be confidential.

The Complaint Tribunal shall provide for such notice to the attorney of proceedings in the matter in accordance with Rule 4(d)(2)(B) or (C), Mississippi Rules of Civil Procedure. The Complaint Tribunal may take or direct whatever action it deems necessary or proper to determine whether the attorney is so incapacitated, including referral to the LJAP to obtain an examination by medical experts approved by the LJAP and to report to the Complaint Tribunal. The costs of such investigation and examination shall be borne by the attorney.

If the Complaint Tribunal, upon due consideration, concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to disability inactive status for an indefinite period and until further order of the Court. The order shall also require the attorney to sign a contract with the LJAP for treatment referral and monitoring as determined appropriate by LJAP. Any pending disciplinary proceedings against the attorney shall be held in abeyance.

(b) Upon being transferred to disability inactive status in another jurisdiction, an attorney admitted to practice in the State of Mississippi shall within thirty (30) days of transfer to disability inactive status provide Complaint Counsel a certified copy of the transfer.

(c) Upon notification from any source that an attorney admitted to practice in the State of Mississippi has been transferred to disability inactive status in another jurisdiction, Complaint Counsel shall obtain a certified copy of the transfer and file it with the Court. A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi should be transferred to disability inactive status shall establish conclusively the disability for purposes of a disability proceeding in the State of Mississippi. The Court shall transfer the attorney to disability inactive status unless the attorney demonstrates or the Court finds that the reason for the original transfer no longer exists. The burden shall be upon the attorney to demonstrate that the reason for the original transfer to disability status no longer exists.

#### **Rule 21. Transfer to Disability Inactive Status a Matter of Public Record**

The transfer of an attorney to disability inactive status shall be a matter of public record. Documents relating to medical evidence or other personal information regarding the attorney shall remain confidential.

#### **Rule 22. Attorney Transferred to Disability Inactive Status Not Permitted to Practice Law**

An attorney transferred to disability inactive status shall not be permitted to practice law until restored to the privileges by order of the Court.

#### **Rule 23. Reinstatement from Disability Inactive Status**

(a) No attorney transferred to disability inactive status may resume active status except by order of the Supreme Court. An attorney transferred to disability inactive status is entitled to petition for transfer to active status once a year or at whatever shorter intervals the Court or Complaint Tribunal may direct in the order transferring the attorney to disability inactive status or any modifications thereof.

(b) Procedures for reinstatement of an attorney transferred to disability inactive status 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 shall be served upon the Bar. An investigatory fee of \$1,000.00 shall be paid to the Bar in addition to any other sum due to the Bar. The petition shall include a status report from LJAP regarding the attorney's treatment,

monitoring, and compliance. In addition, the attorney shall obtain an examination by a medical expert approved by LJAP specifically addressing the removal of the attorney's disability and include the report with the petition. The expense of the examination shall be borne by the attorney.

(c) Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation within thirty (30) days. Upon completion of the investigation or within one hundred twenty (120) days from the commencement of the investigation, whichever occurs first, the Board of Bar Commissioners shall fully answer the petition. The Bar shall determine, based upon Complaint Counsel's investigation, whether the Bar supports, or objects to, the attorney's reinstatement. Upon filing of the Bar's answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require. Upon granting the petition for reinstatement, the Court shall reinstate any pending disciplinary matters that were held in abeyance upon the attorney's transfer to disability inactive status. Pending final resolution of any such disciplinary matters, the Court may, upon motion of the Bar, place the attorney on interim suspension.

### **PART THREE. MISCELLANEOUS**

#### **Rule 24. 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 25. 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 26. 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 27. 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.