

Serial: 147433

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 on its own motion to amend Rule 6 of the *Mississippi Rules of Discipline* to amend the process by which an attorney may seek reinstatement following suspension.

IT IS THEREFORE ORDERED that Rule 6(b) of the Mississippi Rules of Discipline is hereby amended, as follows:

**RULE 6. SUSPENSIONS AND DISBARMENTS BASED ON
OTHER PROCEEDINGS**

....

(b) Upon reversal of the conviction or judgment that has resulted in the automatic suspension, the attorney ~~shall be immediately reinstated, but such reinstatement shall not bar or terminate any disciplinary proceeding instituted thereafter or then pending against 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.

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, Second Series, (Mississippi Edition)*.

SO ORDERED, this the 27th day of May, 2008.

/s/ William L. Waller, Jr.

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

DISAGREE: DIAZ, P.J., EASLEY AND GRAVES, JJ.
DICKINSON, J., OBJECTS TO THE AMENDMENT WITH SEPARATE WRITTEN
STATEMENT.

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DICKINSON, J, OBJECTS TO THE AMENDMENT WITH SEPARATE WRITTEN STATEMENT.

I agree that Mississippi Rule of Discipline 6 needs amending. Prior to today's amendment, the rule required this Court – regardless of the circumstances – to immediately reinstate an attorney who had been suspended as a result of a criminal conviction, and whose conviction was overturned. Thus, to the extent it addresses this problem, I agree with today's change in the rule. But because today's amendment does not provide this Court the discretion – in appropriate cases – to immediately reinstate an attorney without requiring the attorney to comply with MRD 12, I disagree with the amendment. I believe the majority has addressed one problem, and invited another.

Today's amendment to the rule does not allow for occasions where a criminal prosecution is improperly initiated against an attorney. Suppose the attorney is convicted, and appeals to this Court, and our review of the record clearly determines the attorney was wrongfully prosecuted and convicted. Requiring the attorney under such circumstances to comply with Rule 12 for reinstatement is expensive and unfair to the attorney, and a waste of time for the Board of Bar Commissioners and this Court.

The amendment, in my view, should allow this Court to immediately reinstate attorneys who are the victims of obvious wrongful prosecution and conviction. Instead, even under circumstances where we know for sure that a conviction was wrongful, the attorney

is now required to go through the onerous and expensive procedures provide in MRD 12, including the payment of \$500.00. *See* Miss. R. D. 12.7.

MRD 12 was designed to address petitions for reinstatement for attorneys who were rightfully suspended, not attorneys who were wrongfully prosecuted and convicted of a crime. I would, therefore, have included in the amendment to Rule 6 the discretion to immediately reinstate attorneys under circumstances deemed appropriate to a majority of this Court.