

Serial: 113831

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99010-SCT

FILED

MAY 27 2004

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

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

ORDER

Effective September 1, 2003, the Court, by order issued May 29, 2003, adopted various changes to the Mississippi Rules of Professional Conduct and the Rules of Discipline for the Mississippi Bar addressing advertising by attorneys. At the request of the Mississippi Bar, the Court, by order effective August 8, 2003, suspended the operations of those amendments for further study and comment. Included in the suspended amendments are those made to Rule 8 of the Rules of Discipline.


Concurrently with the issuance of this order, the Court has now completed such additional study and considered comments from the Bar and others, and has adopted further amendments, effective October 1, 2004. No further changes have been made to Rule 8 of the Rules of Discipline, and the Court finds that the prior amendments to Rule 8 should be reinstated.

IT IS THEREFORE ORDERED that the amendments made by the Supreme Court to Rule 8 of the Rules of Discipline for the Mississippi Bar, originally to be effective

September 1, 2003 and suspended by order of August 8, 2003, are reinstated to full force, effective October 1, 2004. As reinstated, Rule 8 shall read as set forth in Exhibit "A" hereto.

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

SO ORDERED, this the 24th day of May, 2004.


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

DIAZ AND GRAVES, JJ., NOT PARTICIPATING.

EXHIBIT "A" TO ORDER

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.]