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Office of the Clerk
Supreme Court
Court of Appeals

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN THE MATTER OF:
AMENDMENTS TO THE RULES OF DISCIPLINE FOR THE
MISSISSIPPI STATE BAR

MISC. NO. 89-R-99010

**AMENDED PETITION TO AMEND CERTAIN RULES OF THE
RULES OF DISCIPLINE FOR THE MISSISSIPPI STATE BAR**

The Board of Bar Commissioners for The Mississippi Bar (the Board), the Office of General Counsel for the Bar, the Committee on Professional Responsibility, and various Complaint Tribunals, as designated disciplinary agencies of this Honorable Court, have, over several years, identified aspects of the Rules of Discipline for the Mississippi State Bar ("Rules of Discipline") that deserve study and consideration for improving the attorney disciplinary process.

In 2006, then-Bar President C. York Craig, III, appointed a Rules of Discipline Study Committee (Study Committee) charged with the task of conducting a detailed review of the Rules of Discipline and reporting any recommendations for amendments to the Board of Bar Commissioners. A copy of the Study Committee's roster is attached as **Exhibit 1**.

The Study Committee, after two years of diligent work, completed its study and reported its recommendations to the Board at two Board meetings: April 24, 2008, and June 19, 2008. At its June 19, 2008, meeting, the Board voted to recommend to this Honorable Court amendments to the Rules of Discipline and adoption of rules to separately establish the Mississippi Lawyers and Judges Assistance Program. The Bar petitioned the Court accordingly on August 4, 2008. The Bar has now

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filed a separate petition seeking to strike the Lawyers and Judges Assistance Program from the Rules of Discipline and for the Court to separately establish the Lawyers and Judges Assistance Program with its own set of Rules. The Bar submits the instant amended petition to address the remaining recommendations regarding amendments to the Rules of Discipline.

The proposed amendments to the Rules of Discipline address changes in the practice of law and in disciplinary enforcement that have evolved over the thirty (30) years since the Rules of Discipline were enacted. In addition, it is the intent of these proposed amendments to enhance the existing disciplinary system to allow the public better access to express concerns regarding attorney ethics and to file grievances; to improve the efficiency of the disciplinary process; and to ensure fairness to attorneys who are the subject of grievances and complaints. Other proposed changes simply address issues of clarity, language, grammar, punctuation, gender inclusiveness, and vocabulary. The proposed amendments are attached as **Exhibit 2**.

During the course of its study, the Study Committee consulted various resources, including the ABA Model Rules for Lawyer Disciplinary Enforcement, the NOBC-APRL Joint Committee on Aging Lawyers Final Report, Lawyers' Liability and Discipline February 2004 National Survey, the 1982 Disciplinary Procedures Study Committee report, and other states' lawyer disciplinary enforcement rules and procedures.

The proposed amendment to Rule 1 and its procedure tracks the jurisdiction of the Court over the attorney discipline process already found in Rule 8.5 of the Mississippi Rules of Professional Conduct.

Additionally, the amendments incorporate the Bar's duty to maintain a registry of attorneys as found in the statutes creating the Bar and requires attorneys to register annually and notify the Bar in writing of any changes to the information on the registry within thirty (30) days. The address contained in the registry is the attorney's legal address for purposes of service or notice under the Rules of Discipline. The proposed amendments also aid the Bar in tracking attorneys with multi-jurisdictional practices.

The proposed amendment to Rule 2 simply changes the name of an informal Bar complaint to a grievance in order to clarify the differences between a grievance filed by a member of the public and a Formal Complaint proceeding instituted at the direction of the current Committee on Professional Responsibility. Rule 3 adds the Office of General Counsel as a separate designated disciplinary agent of the Court and changes the name of the Committee on Professional Responsibility to the Commission on Attorney Discipline.

The proposed amendment to Rule 4 provides Mississippi attorneys with clearer direction in how to report the misconduct of another attorney pursuant to the attorney's obligation under Rule 8.3 of the Mississippi Rules of Professional Conduct, the subject of frequent calls to the Office of General Counsel. Rule 4 also removes the Executive Director of the Bar from playing an active role in the attorney discipline process, instead charging the Office of General Counsel with maintaining the docket of written grievances in keeping with the current practice. It also clarifies in keeping with current procedure that an attorney may state that he does not have a grievance filed against him until the Commission on Attorney Discipline renders a decision imposing discipline or directing that a

Formal complaint be filed, since a dismissed grievance is deemed expunged by Rule 7 of the Rules of Discipline.

The proposed amendment to Rule 5 extends the period of time for the Office of General Counsel to investigate a grievance and clarifies that the failure of the grievant or the attorney to participate in the investigation process is not cause for dismissal consistent with the principles inherent in a self-policing profession.

The Board specifically brings to the Court's attention proposed amendments to Rule 6 of the Rules of Discipline. The Board was divided on the issue of including agreements executed pursuant to the Pretrial Intervention Act as a ground for suspension or disbarment based on other proceedings. Therefore, it voted to present both versions to the Court for its consideration.

The proposed amendment to Rule 7 provides additional details as to the investigation engaged in by the Office of General Counsel at the direction of the Commission on Attorney Discipline, extends the time for instituting Formal Complaint proceedings, and changes the style of all complaints to "In Re Discipline of _____." The proposed amendments also again remove the involvement of the Bar's Executive Director. The proposed amendment to Rule 8 extends certain deadlines in proceedings before Complaint Tribunals to address issues regularly encountered in the discipline process. Rule 8 would also allow a Complaint Tribunal to impose an interim suspension of an attorney for threat of harm to the public. Rule 8 would also set the venue of attorney discipline hearings at a neutral site in Jackson at the Supreme Court building instead of the attorney's county of residence.

The proposed amendment to Rule 10 removes irrevocable resignation from this rule and establishes a new Rule 11 to address irrevocable resignations. Rule 11 also provides a new mechanism to allow an attorney in good standing with no grievance filed against him to resign. In order to be reinstated the attorney resigning in good standing would go through the Board of Bar Admissions. This Court would naturally retain jurisdiction to pursue any disciplinary action for conduct that occurred prior to the effective date of the resignation in good standing.

The proposed amendment to Rule 12 provides an effective date of any suspension or disbarment fifteen (15) days from the filing of the suspension or disbarment order in order to allow time for an attorney to close his law practice in an orderly fashion and for the protection of his clients' interests. Rule 12 would allow the Office of General Counsel to seek contempt for an attorney's failure to comply with a probation, suspension or disbarment order and would make such a failure a consideration in any petition for reinstatement. In the case of an inactive, missing or deceased attorney, Rule 12 clarifies the respective roles of the attorney's estate and the Bar for the purposes of closing the attorney's law practice.

The proposed amendment to Rule 13 adds civil judgments as outlined in Rule 6(c) of the Rules of Discipline to the list of disbarments that are not eligible for reinstatement. Rule 13 changes the time for the filing of a petition for reinstatement from a disbarment from three (3) years to five (5) years, increases the investigatory fee for reinstatement to \$1,000 and extends the time for investigation by the Office of General Counsel. Rule 13 would also allow an attorney who must sit for the Bar

exam and the Professional Responsibility Exam to do so six (6) months prior to the date he is eligible to apply for reinstatement.

The proposed amendment to Rule 14 allows the Court to impose reciprocal disability inactive status. Rule 14 provides that the certified copy of a disciplinary order from another jurisdiction is conclusive proof of the misconduct but allows the attorney thirty (30) days to answer and demonstrate that the imposition of the same discipline is not appropriate for certain reasons provided by the Rule. The proposed amendment to Rule 15 clarifies the entities to which immunity applies under these Rules. The proposed amendment to Rule 16 clarifies the entities with which disciplinary agencies may share information to increase efficiency in the attorney discipline process and protect the public. The proposed amendment to Rule 17 clarifies the Court's inherent disciplinary authority over non-resident attorneys and those admitted pro hac vice for purposes of service of process and notice under these Rules.

The proposed amendments to Rules 18 through 24 address incompetent and incapacitated attorneys. Rule 19 allows for the immediate transfer of attorney to inactive disability status upon a judicial declaration he is incompetent or he is involuntarily committed. Rule 20 allows for the transfer to inactive disability status of an attorney who claims he is unable to assist in the defense of a formal disciplinary proceeding and deferral of the proceeding until the Court considers a petition to transfer the attorney to active status. Rule 21 provides the procedure for determining capacity. Rule 22 provides that the transfer of an attorney to inactive disability status is a matter of public record in order to protect the public from attorneys who lack the capacity to practice law. However, all medical evidence or other personal

information related to the attorney would remain confidential. Rule 24 sets forth the procedure for reinstatement of an attorney to active status and tracks the procedure required for a suspended or disbarred attorney.

The proposed amendment to Rule 26 clarifies the costs and expenses to be reimbursed to the Bar upon the imposition of discipline and sets a standard fee for discipline imposed by the Commission on Attorney Discipline and a standard fee for discipline imposed by a Complaint Tribunal reflective of the differing amounts of time and resources involved in each process.

Proposed Rule 28 is a new rule similar to that found in twenty other jurisdictions that allows the Court to issue subpoenas under the law of another jurisdiction in attorney discipline and disability matters.

Attached as **Exhibit 3** are summaries of the proposed amendments to the Rules of Discipline, including a discussion of the two predominant viewpoints regarding proposed amendments to Rule 6 of the Rules of Discipline.

WHEREFORE, PREMISES CONSIDERED, The Mississippi Bar respectfully recommends and requests that the Supreme Court of the State of Mississippi amend certain rules of the Rules of Discipline for the Mississippi State Bar as set forth in **Exhibit 2** and enter such orders as it deems necessary and appropriate.

Submitted this the 21st day of March 2014.

THE MISSISSIPPI BAR

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**DISCIPLINARY PROCEDURES STUDY
AD HOC COMMITTEE**

All appointments are for one year. This committee shall review the Rules of Discipline and the Bar's internal operating policies as they pertain to the attorney discipline process and make recommendations to the Board of Commissioners as to how the rules and internal policies and procedures may be improved.

Members

Robert R. "Bobby" Bailess, Vicksburg

Wayne Drinkwater, Jackson

Stephen C "Steve" Edds, Jackson, Chair

Tommy E. Furby, Brandon

Chris G. Henderson, Jackson

Andrew J. "Andy" Kilpatrick, Jr., Ridgeland

Patricia F. Melvin, Jackson

Judge Ed Patten, Jr., Hazlehurst

Karen K. Sawyer, Gulfport

Term

All terms expire 2007

Staff Liaisons:

Adam B. Kilgore, General Counsel

Gwen G. Combs, Deputy General Counsel

James R. Clark, Deputy General Counsel

Henry M. "Chip" Glaze, Jr., Clinical Director, LJAP



PROPOSED AMENDMENTS
MISSISSIPPI ATTORNEY DISCIPLINARY RULES

PART ONE. RULES OF DISCIPLINE - GROUNDS FOR DISCIPLINE

The license to practice law in this state is a continuing proclamation by the Supreme Court **of Mississippi (the 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 **engage in conduct**, both professionally and personally, in conformity with the standards imposed upon members of **The Mississippi Bar (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 **Mississippi Rules of Professional Conduct (MRPC)** 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 Court has exclusive and inherent jurisdiction of matters **and proceedings** pertaining to attorney discipline, reinstatement, and **determination of the personal capacity of a lawyer to practice law in the State of Mississippi**. **The Court also has exclusive and inherent jurisdiction of matters and proceedings pertaining to** the appointment of receivers for **missing, deceased, incapacitated**, suspended or disbarred attorneys. **All such proceedings** shall be conducted in accordance with these Rules. The Court is 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.

(c) Actions by other courts are cumulative and in addition to the disciplinary jurisdiction of the Court and its disciplinary agencies. Actions by other courts shall not be binding or conclusive as to the Court, 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 **in the State of Mississippi**.

(e) Nothing in these Rules shall be construed to affect or limit the Court's power to regulate the activities or conduct of judges in the State of Mississippi. Complaints or grievances against judges shall be filed with the Commission on Judicial Performance.



Procedure

(1.1) The jurisdiction of the Court shall extend to any resident or non-resident attorney duly licensed or admitted pro hac vice in the State of Mississippi. The jurisdiction of the Court shall also extend to attorneys not licensed or admitted pro hac vice in the State of Mississippi if the attorney advertises or provides or offers to provide any legal services to be performed in this jurisdiction.

(a) A permanent registry of attorneys licensed to practice law in the State of Mississippi shall be established and maintained by the Bar and shall contain, at a minimum, the following information:

(i) Full name and all names under which the attorney has been admitted or practiced;

(ii) Date of birth and date of death if applicable;

(iii) Current law office address, telephone number, and e-mail address;

(iv) Current residence address;

(v) Date of admission in the State of Mississippi;

(vi) Date of transfer to or from inactive status or disability inactive status;

(vii) Other jurisdictions in which the attorney is admitted and date of admission;

(viii) Nature, date and place, of any discipline imposed and any reinstatements in the State of Mississippi or any other jurisdiction.

(b) The permanent registry of attorneys licensed to practice law in the State of Mississippi shall be updated by the Bar at least annually.

(c) Each attorney shall keep the attorney's registration information current and shall notify the Bar in writing within thirty (30) days of any change. When an attorney has disappeared or is deceased or disabled, the attorney's relatives are encouraged to report that fact to the Bar in writing; law partners or associates in the firm, corporation, or agency in which the attorney was employed must report that fact to the Bar in writing.

(d) The address listed in the registry is the attorney's legal address for purposes of service of process and any other notices under these Rules.

(1.2) Nothing in this Rule shall be construed to limit in any manner the application of any Rule of the MRPC as adopted by the Court.

(1.3) Any nonresident attorney licensed or admitted pro hac vice to practice law in the State of Mississippi and any attorney not licensed or admitted pro hac vice in the State of Mississippi who advertises or provides or offers to provide any legal services to be performed in this jurisdiction shall be deemed to have appointed the Executive Director of The Bar as the attorney's 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 grievance or complaint.

(b) Each party to a grievance or complaint shall have the power to summons and examine witnesses under oath and to compel their attendance, to 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, grievance, or complaint. 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 of the Court shall be served according to the Mississippi Rules of Civil Procedure.

(c) Any defiance of any summons or subpoenas so issued, or other extrajudicial conduct which shall inhibit, impede, or disrupt any of the disciplinary agencies as designated in these Rules 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

The Clerk of the Court shall file all pleadings and issue all process. 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 Office of General Counsel.
- (c) The Commission on Attorney Discipline.
- (d) The Complaint Tribunals and Panels appointed by the Court.

- (e) Receivers designated by a **Complaint Tribunal** or the Court.
- (f) Other attorneys who may from time to time be requested in writing by the President **of the Bar, the Board of Commissioners for the Bar,** or by the Court to assist with an investigation or prosecution.

Procedure

(3.1) When acting in the course of its 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 the **State of Mississippi** and shall further be constituted as follows:

(a) Board of Commissioners for the Bar. The Board of Commissioners for the Bar **(the Board)** is provided for by Miss. Code Ann. § 73-3-107 (1972, as amended). The Board shall have the authority to employ and compensate competent persons to serve as **General** Counsel, **Deputies General** 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 affect the disciplinary procedures set forth herein.

(b) The Office of General Counsel. The Office of General Counsel shall investigate grievances, prosecute complaints, and discharge other duties assigned by the Board and the Commission on Attorney Discipline.

(c) **Commission on Attorney Discipline.** The **Commission on Attorney Discipline** shall be composed of six (6) members appointed by the President of the Bar for terms of **three (3)** 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. The Chairman of the **Commission on Attorney Discipline** shall be designated by the President of the Bar **for a one (1) year term.**

(d) 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 (3) year terms. Appointments may be terminated by the Court.

(e) Complaint Tribunal. **Complaint Tribunal** members shall be selected from the panels **as provided herein** above. Each **Complaint Tribunal** shall consist of two attorneys and one judge, and the judge member shall serve as the presiding judge of the **Complaint Tribunal**. Whenever a **Complaint Tribunal** member is unable to serve or a hearing will be unduly delayed because of the unavailability of a **Complaint 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. If the presiding judge or other member of the Complaint Tribunal is unable to serve or the hearing shall be unduly delayed, the Chief Justice **of the Court** may appoint a new presiding judge or other member from the judges or members on the appropriate panel. **The Complaint Tribunal** designated to hear and determine a case 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 **subject** attorney resides. **Complaint** Tribunal members shall be selected on a rotating basis from the panels **as provided herein** 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 of the Bar **or the Board**.

RULE 4. INITIATION AND FILING OF GRIEVANCES

(a) Any matter touching on the **ethical** misconduct of an attorney licensed in the State of Mississippi or any attorney who renders or has rendered legal services in the **State of Mississippi** shall be called to the attention of **General** Counsel in writing. **Attorneys licensed in the State of Mississippi may fulfill their 8.3, MRPC, obligation to report the professional misconduct of another attorney by filing a grievance or by submitting a report in writing to General Counsel.**

(b) All attorneys, courts, and their officers shall have the affirmative duty to notify **General** 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 **Commission on Attorney Discipline** shall not consider **a grievance** until it has been reduced to writing. **Grievances must be submitted on an original form provided by the Bar.**

(d) No **grievance** shall be considered by the **Commission on Attorney Discipline** unless received, discovered, or otherwise brought to their attention within three (3) years after the date of discovery of the facts upon which the **grievance** is based. **Allegations of violations of Rules 1.15, 8.1 and 8.4 (b) through (f), MRPC, shall not be covered by this limitation.**

Procedure

(4.1) **General** Counsel shall keep a docket of all written **grievances**. **A docketed grievance** shall not be considered a grievance or charge touching the attorney's conduct until **the grievance has been considered and a decision rendered by the Commission on Attorney Discipline finding that the imposition of discipline is warranted. Until the Commission on Attorney Discipline renders a decision imposing discipline or directs that a complaint be filed,** the attorney may state that no grievance or charge has

been filed against **the subject attorney**. **Grievances** at any stage may be reported for statistical purposes.

(4.2) Written **grievances** shall contain **at a minimum**:

- (a) The name, mailing address, and phone number of the **grievant**; and
- (b) The name and address of the **subject** attorney; and
- (c) A statement of the facts of the **grievance**; 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 **grievance**.

(4.3) If a written **grievance** is found to be deficient, **General** Counsel may return it to **the grievant** with a statement of the deficiency. All such **grievances** shall be reported to the **Commission on Attorney Discipline** if the deficiency has not been cured within forty-five (45) days of the date on which it was returned to the **grievant**. The **Commission on Attorney Discipline** thereafter may act upon those matters as provided in Rule 7 **of these Rules**.

RULE 5. INVESTIGATION OF GRIEVANCES

General Counsel shall conduct **any** investigations **of grievances** fairly and impartially and shall seek to elicit any and all facts which might be exculpatory or incriminatory of the **subject** attorney. All proceedings shall be expeditiously conducted to the end that no **grievant** be deprived of the right to a timely, fair, and proper investigation of a **grievance** and that no attorney be subjected to unfair and unjust charges.

Procedure

(5.1) **General**. **General** Counsel **shall** require a **grievance** to be in writing or may file a **grievance** on information and belief. **General** Counsel shall investigate, if necessary, and report to the **Commission on Attorney Discipline regarding all** written **grievances**.

(5.2) **Investigations and Investigatory Hearings**. Upon receipt of a written **grievance** or information indicating probable cause, **General** Counsel **may** conduct a **preliminary** investigation, either with or without notice to the **subject** attorney, as in **General** Counsel's discretion appears appropriate. In **General** Counsel's discretion, the **grievance** and evidence may be **mailed to** the attorney **for response** prior to submission of the report to the **Commission on Attorney Discipline**. A response by the attorney to the **grievance** shall be tendered to **General** Counsel within fifteen (15) days of the mailing of the **grievance unless the time is extended by General Counsel**. An investigatory hearing in the discretion of **General** Counsel or by direction of the **Commission on Attorney**

Discipline may be conducted prior to the submission of **General** Counsel's report to the **Commission on Attorney Discipline**.

(5.3) **Grievants**. The person signing the **grievance** is not a party to the proceedings **and has no authority to subsequently withdraw the grievance**. **The Office of General Counsel does not represent the grievant**. **The** failure or refusal of **the grievant** or any witness to cooperate during the investigation shall not be cause for dismissal of the **grievance** or termination of the investigation. Persons signing **grievances** or witnesses may be represented by counsel or may proceed as counsel for themselves during any investigation.

(5.4) **The Subject Attorney**. The **attorney who is the subject of a filed grievance** is a party to the proceedings, and after written notice of the **grievance** has been given to the **subject** attorney by **General** Counsel, **the subject** attorney **and/or** counsel **for the subject attorney** shall have the right to appear at any investigatory hearing for the purpose of examining or cross-examining all witnesses and for presenting witnesses and evidence on behalf of the attorney. The **subject** attorney **shall** appear at an investigatory hearing **and give testimony when written demand is made** by **General** Counsel. **The failure or refusal of the attorney to cooperate at an investigatory hearing shall not be cause for dismissal of the grievance or termination of the investigatory hearing or investigation**. **The failure of the subject attorney to appear, after proper notice, waives the attorney's right to cross examine witnesses, present evidence, or present witnesses at the investigatory hearing**.

(5.5) **Process During Investigations**. Subpoenas during investigations **by either party to a grievance must** be issued **by the Clerk of the Court and shall comply with the Mississippi Rules of Civil Procedure**. Upon completion of the investigation, a copy of the **written** report, **if any, the grievance**, and all evidence shall be **mailed to the subject** attorney. A response by the **subject** attorney to the report **may** be tendered to **General** Counsel within fifteen (15) days of the mailing of the report. **General Counsel shall forward the subject attorney's response to the Commission on Attorney Discipline**.

RULE 6. See Two Versions

RULE 7. COMMISSION ON ATTORNEY DISCIPLINE POWERS AND DUTIES

(a) The **Commission on Attorney Discipline** shall function as a grand jury in matters of attorney discipline.

(b) Upon receipt of a **grievance**, **General** Counsel's report and any response by the attorney, the **Commission on Attorney Discipline** shall:

- (i) Dismiss **the grievance as being** without merit;
- (ii) Direct or conduct further investigation if needed;

(iii) Refer the matter to **General** Counsel for filing and prosecution of a complaint; or

(iv) Issue an **informal** admonition, a private reprimand, or a public reprimand.

(v) In its discretion, and in addition to any action taken by the **Commission on Attorney Discipline** under Rule 7(b)(ii), (iii) or (iv) **of these Rules, and** notwithstanding the provisions of Rule 15 of these Rules, **the Commission on Attorney Discipline may** delay final action and refer the attorney to the **LJAP** for, as recommended by the **LJAP, referral for** evaluation, treatment, monitoring, and assistance.

(c) If issued, **an informal** admonition, a private reprimand, or a public reprimand shall be sent to the **subject** attorney and a copy shall be sent to the **grievant**. The **subject** attorney shall have a right within **thirty (30)** days after receipt of the **informal admonition, private reprimand, or public reprimand** to request in writing that a formal disciplinary proceeding be initiated against the attorney to adjudicate the propriety of the conduct upon which the **informal** admonition, **private reprimand** or **public reprimand** is based. If such request is timely made, the **informal** admonition, **private reprimand**, or **public reprimand** shall be vacated and the matter shall be processed by means of a complaint. An informal admonition shall not be used as a substitute for and shall not be considered discipline. However, an informal admonition may be disclosed in any subsequent disciplinary proceedings against the **subject** attorney.

(d) When a public reprimand becomes final, the attorney shall appear before the circuit court of the attorney's county of residence or county of practice, as specified by the Commission on Attorney Discipline, on the first day of a term convening next after the date the public reprimand becomes final or on some other similar day when a maximum number of the Bar and the public are present and shall be read by the senior judge or the senior judge's designee at the time therein indicated and placed upon the minutes of the court. A Certificate of Compliance with the Public Reprimand shall be returned to the Bar by the subject attorney. When a reprimand becomes public, a copy shall be given to the person filing the **grievance**, the Executive Director of the Bar, and to the judges of the circuit and chancery districts of the attorney's county of residence.

(e) Referral to the **LJAP** 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 **Commission on Attorney Discipline**, in its discretion, may delay any action under Rule 7(b)(ii), (iii) or (iv) of these Rules provided that an attorney who is referred to the **LJAP** by the **Commission on Attorney Discipline** complies with all terms and conditions imposed upon the attorney by the **LJAP**. If the attorney violates the terms and conditions imposed by the **LJAP** upon such attorney, the **LJAP** shall report such failure to comply with all terms and conditions imposed upon the attorney by the **LJAP**, and upon receipt of such report, the **Commission on Attorney Discipline** shall take such action under **Rule 7(b) of these Rules** which the **Commission on Attorney Discipline** delayed but originally could have taken. In any notification to the **grievant** of the action or actions taken by the **Commission on Attorney Discipline**, the **Commission on**

Attorney Discipline, in its discretion, may not include notice of the Commission on Attorney Discipline's referral of the attorney to the LJAP.

Procedure

(7.1) **Dismissals.** Any grievance dismissed pursuant to Rule 7(b)(i) of these Rules shall be deemed expunged and not considered a charge touching upon the conduct of the attorney. Upon dismissal, the grievant, the subject attorney, and General Counsel shall be given written notice.

(7.2) **Referrals for Additional Investigation.** Upon receipt of General Counsel's report and any response by the subject attorney, the Commission on Attorney Discipline may refer the matter for additional investigation and report with such instructions as may appear appropriate. Investigations may include, but are not limited to, depositions, telephone conversations, written correspondence, examination of trust account records, or investigatory hearings. The investigatory function may be conducted by an investigator hired by General Counsel. Investigatory hearings or depositions shall be conducted by General Counsel. The Commission on Attorney Discipline shall periodically fix the costs and expenses incurred as of that date provided that no cost shall actually be assessed unless discipline is finally imposed. A copy of General Counsel's report and all evidence shall be mailed to the subject attorney who shall have fifteen (15) days to respond. General Counsel's report and the attorney's response shall be forwarded to the Commission on Attorney Discipline which shall act upon the matter.

(7.3) **Complaints.** If, after conclusion of the investigation, the Commission on Attorney Discipline is of the opinion that probable cause exists to believe the subject attorney has engaged in conduct warranting discipline other than that outlined in Rule 7(b) of these Rules, the matter shall be referred to General Counsel for filing of a complaint for trial before a Complaint Tribunal. General Counsel shall file the complaint with the Clerk of the Court. Each Complaint filed by General Counsel shall be styled as "In Re Discipline of" followed by the attorney's name.

RULE 8. COMPLAINT TRIBUNAL POWERS AND DUTIES

(a) All 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 Complaint Tribunal shall render a written opinion incorporating a finding of fact and a judgment which may:

- (i) Exonerate the attorney and dismiss the 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, notwithstanding the provisions of Rule 15 of these Rules, refer the attorney to the **LJAP** for, as recommended by the LJAP, **referral for** evaluation, treatment, monitoring, and assistance.
- (c) The Complaint Tribunal shall have the power to enjoin violations under the MRPC.

Procedure

(8.1) Within **thirty (30)** 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 **Complaint** Tribunal, unless extended by the **by the Complaint Tribunal** on motion of either party for good cause shown.

(8.2) All complaints shall be prosecuted by **General** Counsel unless the President **of the Bar** or **Board** shall appoint another attorney or attorneys to assist or proceed in the place of **General** Counsel.

(8.3) The 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 **thirty (30)** days after a copy of the complaint is served.

(8.5) Trials shall be held in the **courtroom of the Supreme Court of Mississippi at Jackson, Mississippi, or** upon motion made by either party and order by the **Complaint** Tribunal, trial may be held elsewhere. The presiding judge shall hear and determine all pre-trial motions and all non-dispositive motions and enter all appropriate orders. The **Complaint** Tribunal may hold such pre-trial conferences as deemed appropriate. Trial upon the merits shall be held before the full **Complaint Tribunal** and shall be held as expeditiously as possible consistent with due process.

(8.6) No discipline shall be imposed except upon clear and convincing evidence. After final hearing on the merits, the opinion of the **Complaint** Tribunal may:

- (i) Exonerate the attorney and dismiss the complaint.
- (ii) Publicly or privately reprimand the attorney.

If the **Complaint** Tribunal is of the opinion that a private reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the **Complaint** Tribunal, **after the private reprimand becomes final, shall cause it to be forwarded** to the attorney, **to General Counsel, and to the person filing the grievance** by the Clerk of the Court.

If the **Complaint** Tribunal is of the opinion that a public reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the **Complaint** Tribunal **shall** order the attorney to appear before the circuit court of the attorney's county of residence **or county of practice, as specified by the Complaint Tribunal**, on the first day of a term convening next after the date the **public** reprimand becomes final or on some other similar day when a maximum number of the Bar and the public are present. **A final public reprimand shall be read by the senior judge or the senior judge's designee at the time therein indicated and placed upon the minutes of the court. A Certificate of Compliance with the Public Reprimand shall be returned to the Bar by the subject attorney.** When a reprimand becomes public, a copy shall be given to the person filing the **grievance**, the Executive Director of the Bar, and to the judges of the circuit and chancery districts of the attorney's county of residence.

(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 Rule 8.6(iii) **of these Rules**.

(v) In addition to Rule 8.6(ii), (iii), or (iv) **of these Rules**, notwithstanding the provisions of Rule 15 of these Rules, refer the attorney to the **LJAP** for, as recommended by **the LJAP, referral for** evaluation, treatment, monitoring, and assistance. The **Complaint** Tribunal may delay action under Rule 8.6(ii), (iii) or (iv) of these Rules provided that an attorney who is referred to **the LJAP** by the **Complaint** Tribunal complies with the terms and conditions imposed upon the attorney by the **the LAJP**. If the attorney violates the terms and conditions imposed by the **the LJAP** upon the attorney, **the LJAP** shall report such failure to comply with all terms and conditions imposed upon the attorney by the **LJAP**, and upon receipt of such report, the **Complaint** Tribunal may take such action under Rule 8(b) of these Rules which the **Complaint** Tribunal delayed but originally could have taken.

(8.7) Interim Suspension for Threat of Harm. In a matter before the Complaint Tribunal, upon receipt of sufficient evidence demonstrating that

- (a) the attorney has committed a violation of the MRPC; or**
- (b) the attorney is under a disability as herein defined; and**
- (c) the attorney's continued practice of law poses a threat of serious harm**

to the public;

General Counsel shall file a motion for interim suspension and notice it for hearing before the full Complaint Tribunal. After hearing on the motion, the Complaint Tribunal may enter an order immediately suspending the attorney pending final disposition of the underlying disciplinary proceeding predicated upon the conduct causing the harm, or may order such other action as it deems appropriate. If the Complaint Tribunal imposes an interim suspension upon the attorney pending final disposition of the underlying disciplinary proceeding, the underlying disciplinary proceeding shall be expedited. The interim suspension shall be a matter of public record. The suspended attorney shall comply with the requirements of Rule 11 of these Rules.

RULE 9. APPEALS

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

(b) Where the Complaint 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) Either the Bar or the attorney may appeal a final disposition of the Complaint Tribunal. The Board shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board may direct General Counsel to perfect an appeal when the Board believes that the Complaint 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) Any notice of appeal shall be filed and served on all opposing counsel within thirty (30) days of the date on which the Complaint Tribunal's judgment was filed with the Clerk of the Court and by paying within that time all sums assessed as costs and expenses by the Complaint Tribunal. 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 pursuant to the Mississippi Rules of Appellate Procedure.

(9.3) No private or public reprimand shall become effective within the thirty (30) days provided for taking an appeal or until the Court has disposed of any appeal.

An appeal duly perfected, as provided above, from a judgment of the Complaint Tribunal imposing discipline of suspension for not more than six (6) months shall operate as supersedeas and the 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 (6) months or more and those imposing disbarment, supersedeas shall be within the sound discretion of the **Complaint** Tribunal, subject to review by this Court, upon application of the attorney made within thirty (30) days of the entry of the judgment. In ruling upon such application, the **Complaint** 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 **Complaint** Tribunal may be made to this Court **pursuant to Rule 8(c), Mississippi Rules of Appellate Procedure.**

Any stay may be conditioned upon giving bond as may be found appropriate by the **Complaint** 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 attorney has defended **conduct** which is the subject of the complaint **by asserting mental or physical impairment**, except upon a clear and convincing showing of restoration to mental and physical health sufficient to assure the attorney's ability to perform his or her professional responsibilities.

(9.4) Upon appeal the Court shall review the entire record and the findings and conclusions of the **Complaint** Tribunal **de novo**, and shall render such orders as the Court may find appropriate. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate.

RULE 10. PLEAS OF NOLO CONTENDERE AND ADMISSIONS

Any time after the filing of the 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 of these Rules.

Procedure

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

(10.2) **Pleas of Nolo Contendere.** Such pleas need not address the factual matters alleged on the 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.** Admissions shall fully address the factual matters alleged in the 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 complaint and admission to the remainder.

(10.5) The purpose of **Rules** 10.1 through 10.4 **of these Rules** is to provide a prompt, speedy, knowledgeable, and just disposition of any disciplinary matter.

RULE 11. RESIGNATIONS

(a) An attorney who has a **grievance** or a complaint filed against the attorney may tender to the Court or to the Complaint Tribunal an irrevocable resignation.

(b) An attorney who is a member of the Bar in good standing may, under oath, petition the Court for leave to resign from the privilege of practicing law in the State of Mississippi. Upon acceptance of the petition by the Court, the person shall not practice law in the State of Mississippi or be entitled to any privileges and benefits accorded to active members of the Bar in good standing.

Procedure

(11.1) **Irrevocable Resignation.** An attorney may tender an irrevocable resignation to either the Court or the **Complaint** 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 **Complaint** 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 matters charged. **Jurisdiction remains with the Court and its designated disciplinary agencies to pursue grievances and complaints against the former attorney for conduct which occurred prior to the effective date of the attorney's irrevocable resignation.**

(11.2) Resignation While in Good Standing.

(a) The petition for leave to resign while in good standing shall be filed under oath with the Court and shall contain a statement that there are no disciplinary actions or criminal proceedings pending against the petitioner and that the petitioner is a member in good standing of the Bar. A copy of the petition shall be served upon General Counsel.

(b) General Counsel, within ten (10) days after being served with the petition, shall certify in writing to the Court whether the petitioner is an active member in good standing with the Bar and whether the petitioner is under disciplinary investigation by any designated disciplinary agency of the Court or has a complaint pending against the attorney.

(c) The petition may be granted if petitioner is an active member in good standing and has no pending disciplinary investigation, complaints, or charges. No petition for leave to resign while in good standing shall be accepted if there are disciplinary proceedings or criminal charges pending against the petitioner or if the petitioner is not a member in good standing.

(d) After the effective date of the resignation while in good standing, in order to be reinstated, the former attorney must comply with the rules governing admission to the practice of law in the State of Mississippi.

(e) Upon the effective date of the resignation while in good standing, the former attorney shall comply with the requirements of Rule 11 of these Rules.

(f) Jurisdiction remains with the Court and its designated disciplinary agencies to pursue grievances and complaints against the former attorney for conduct which occurred prior to the effective date of the attorney's resignation while in good standing.

RULE 12. EFFECT OF SUSPENSION, DISBARMENT, IRREVOCABLE RESIGNATION, INCAPACITY, OR DEATH

(a) Orders of suspension or disbarment shall be effective fifteen (15) days following the filing of such an order, unless the Complaint Tribunal or the Court determines immediate suspension or disbarment is required to protect the public from additional harm.

(b) An appeal shall operate as a supersedeas except as to any judgment of disbarment or suspension entered under Rules 6 or 10 **of these Rules**. 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.

(c) A suspended attorney may, at the discretion of the Complaint Tribunal or the Court, be placed on probation with specified terms. **The terms may include the ability to practice law while on suspension.**

(d) A disbarred, suspended, or **irrevocably** resigned attorney shall, **in writing**, (1) notify all **current** clients of the attorney's disbarment, suspension, or resignation and **the attorney's** consequent inability to act as an attorney after the effective date of the attorney's disbarment, suspension or resignation; (2) notify each **adverse party** involved

in pending litigation or administrative proceedings and the attorney or attorneys for each adverse party in such proceedings, of the attorney's disbarment, suspension, or **irrevocable** resignation and consequent inability to act as an attorney after the effective date of the attorney's disbarment, suspension, or **irrevocable** resignation; (3) advise each client promptly to substitute other counsel in the attorney's place or to seek legal advice elsewhere; (4) notify all affected courts and agencies of the attorney's disbarment, suspension, or **irrevocable** 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.

(e) In the event of **irrevocable** resignation, disbarment, or suspension, receivers may be appointed by the **Complaint Tribunal or the Court** 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 **Complaint Tribunal or the Court** shall receive and review reports from the receivers.

(f) **The Office of General Counsel** shall monitor compliance with the terms of any probation, suspension, disbarment, or **irrevocable resignation**. **As necessary, the Office of General Counsel shall file motions for contempt for failure of an attorney to comply with such orders.**

(g) Failure to comply with any order of discipline may be punished as contempt and may constitute a separate ground for disciplinary action. **Additionally, failure to comply with any order of discipline may be considered in any petition for reinstatement that may be filed.**

(h) Whenever an attorney has been transferred to inactive **disability** status, 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 the chancery court of proper jurisdiction**, upon proper proof of the fact, **may** 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 clients of** the inactive, missing, or deceased attorney and to generally carry out the functions described in Rule 11(d) **of these Rules. The duly appointed administrator of an estate shall be considered to be a responsible party for purposes of this Rule.**

(i) 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.

Procedure

(12.1) **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 an **irrevocable** resignation, or proof of death is entered, the receivers, either with or without assistance from the suspended, disbarred, or **irrevocably resigned** attorney shall immediately take such action as may be necessary to protect the interests of the clients **of the subject 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 written motion with notice to the Bar, the Complaint Tribunal or the Court last having jurisdiction of the disciplinary matter involving the attorney shall have broad discretion in allowing the suspended, disbarred, or irrevocably resigned attorney to continue as the attorney of record in a particular case. The attorney, the attorney's client, or other litigants shall have standing to file such a motion.

(12.2) **Questions Pertaining to Closing a Practice.** The receivers shall present to the **Complaint Tribunal or the Court or the chancery court that appointed the receivers** any question upon which direction is needed.

(12.3) **Reports by Receivers.** Upon the closing of **a law practice pursuant to this Rule**, the receivers shall tender appropriate reports to the **Complaint Tribunal or the Court or the chancery court that appointed the receivers**. Where appropriate or necessary, interim reports shall be tendered.

(12.4) **Law Partners. Continuance of Representation.** If the client agrees, the law partners of a suspended, disbarred, **irrevocably resigned, or disabled** attorney may continue to represent any client affected by the **attorney's** suspension, disbarment, **irrevocable resignation, or inactive disability status**, but notice thereof must be given as set out above.

(12.5) **Costs and Expenses.** **Reasonable and actual** costs and expenses incurred by the receivers in the closing of the practice **of a suspended, disbarred, or irrevocably resigned** attorney shall be paid by the Bar. The Bar shall be entitled to recover of and from the suspended, disbarred, or **irrevocably resigned** attorney expenses incurred in connection with the receivers.

RULE 13. 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 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 **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, **or shall have 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

(13.1) Disbarments. The petition for reinstatement shall not be filed until **five (5) years** after the date the order of disbarment became final.

(13.2) 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.

(13.3) 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 **General 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.

(13.4) 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.**

(13.5) 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.**

(13.6) 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.

(13.7) 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 **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 attainment 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, **and in addition to restitution due to** persons injured by the petitioner's improper conduct. The matters set out in this paragraph **are** jurisdictional.

(13.8) Board of Commissioners for the Bar. Upon receipt of the reinstatement petition, the Court shall allow General Counsel **one hundred twenty (120)** days within which to conduct an investigation and fully answer the petition. **The Board shall determine, based upon General Counsel's investigation, whether the Bar supports 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.

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

RULE 14. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS

(a) **Upon being disciplined or transferred to disability inactive status in another jurisdiction, an attorney admitted to practice in the State of Mississippi shall within thirty (30) days of the imposition of discipline or transfer to disability inactive status provide General Counsel a certified copy of the discipline or transfer. Failure to provide the certified copy within the time provided in this Rule shall, upon petition by General 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 or transferred to disability inactive status in another jurisdiction, General 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 or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or**

disability 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, which may be more or less severe than the discipline imposed by the other jurisdiction.

Procedure

(14.1) Upon receipt by **General Counsel** of a certified copy of an order that an attorney admitted to practice in the **State of Mississippi** has been disciplined or transferred to disability inactive status in another jurisdiction, **General Counsel** shall present the 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. **The attorney may file an answer to the complaint within thirty (30) days of service of the complaint.**

(14.2) The Court shall impose discipline upon the attorney or transfer the attorney to disability inactive status unless the attorney demonstrates or the Court finds that it clearly appears upon the face of the record from which the discipline or transfer 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; or

(d) The reason for the original transfer to disability inactive status no longer exists.

The burden shall be upon the attorney seeking different discipline in the State of Mississippi to demonstrate that the imposition of the same discipline is not appropriate or that the reason for the original transfer to disability status no longer exists.

RULE 15. IMMUNITY FROM CIVIL SUIT - RIGHT TO SUE

(a) All **grievances** 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 **grievance** shall be immune from any civil suit pending thereon. The officers of the Bar, the **Board of Commissioners of the Bar**, all of the disciplinary agencies, 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. **For purposes of this Rule, the term “disciplinary agencies” shall include the Lawyers and Judges Assistance Program.**

(b) In an action separate and distinct from the disciplinary proceedings, the **subject** 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 **subject** 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.

RULE 16. CONFIDENTIALITY OF MATTERS UNDER THESE RULES PENALTIES

(a) All disciplinary agencies, their assistants, staff, 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 **subject** attorney may make such public statement or disclosure as he **or she** desires. The period of confidentiality shall end, however, upon the happening of any of the following events: (i) upon the **subject** attorney making any public statement or disclosure about a proceeding under these Rules; or (ii) a complaint under these Rules is filed with the Clerk of the 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. **Disciplinary agencies shall also have the authority to share information with all other disciplinary agencies named in these Rules, the Judicial Performance Commission, the Board of Bar Admissions, the Ethics Commission, and their counterpart disciplinary agencies in other states.**

(c) These Rules shall not prohibit any **grievant**, the **subject** attorney, or any witnesses from discussing publicly the existence of a 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) **of these Rules**, in whatever form or by whatever means, outside the disciplinary process shall not enjoy the immunity provided in Rule 14 **of these Rules**.

RULE 17. JURISDICTION OF NON-RESIDENT ATTORNEYS - NOTICE - SERVICE

(a) The acceptance by a non-resident attorney of the rights and privileges of the **license to practice** law in the **State of Mississippi or admission pro hac vice** shall be deemed equivalent to an appointment by the non-resident attorney of the Executive Director of the Bar to be **the attorney's** true and lawful attorney, upon whom may be served all process, summons, or notice of any and all proceedings against **the attorney** instituted pursuant to and conducted under these Rules. Acceptance of the rights and privileges **of the license to practice law in the State of Mississippi or admission pro hac vice** by a non-resident attorney in the **State of Mississippi** shall **constitute the attorney's** agreement that process, summons, or notice against **the attorney** which is so served shall have the same legal force and validity as if served personally.

(b) Notice of the service of process, summons, or notice, together with a copy of any **grievance or** complaint shall be mailed forthwith by the Executive Director **of the Bar** by United States certified mail, return receipt requested, with postage pre-paid, to **the** non-resident attorney at **the attorney's** address **as is registered with the Bar under Rule 1 of these Rules or with the Court upon admission pro hac vice**.

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

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

RULE 18. INCAPACITATED DEFINED

For purposes of Rules 18 through 24, 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 19. INVOLUNTARY COMMITMENT OR AJUDICATION 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)(1)(C), Mississippi Rules of Civil Procedure. The judge of any court within this state shall have the affirmative duty to cause a certified copy of the order declaring the attorney incompetent or involuntarily committing the attorney on the grounds of incompetency or disability to the Office of General Counsel within ten (10) days after the entry of such order.

RULE 20. 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 21 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 21. PROCEEDINGS TO DETERMINE INCAPACITY

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)(1)(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.

RULE 22. 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 23. 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 24. REINSTATEMENT FROM DISABILITY INACTIVE STATUS

No attorney transferred to disability inactive status may resume active status except by order of the 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.

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 of said petition 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 the Bar. The petition shall include a status report from the LJAP regarding the attorney's treatment, monitoring, and compliance. In addition, the attorney shall obtain an examination by a medical expert approved by the 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.

The Bar shall be given one hundred twenty (120) days within which to conduct an investigation and fully answer the petition. The Board shall determine,

based upon General Counsel's investigation, whether the Bar supports 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 pending disciplinary matters that were held in abeyance upon the attorney's transfer to disability inactive status. Pending final resolution of such disciplinary matters, the Court may, upon motion of the Bar, place the attorney on interim suspension.

PART THREE. MISCELLANEOUS

RULE 25. 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 intervals may result in contempt of the disciplinary agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

RULE 26. COSTS AND EXPENSES

(a) The Commission on Attorney Discipline may assess the actual, reasonable costs and expenses of investigation of any grievance incurred by the Bar against a subject attorney. Such costs and expenses shall include, without limitation, copy costs and expenses, postage, travel expenses, court reporter fees, and other out of pocket expenses. Such expenses shall not include costs and expenses for General Counsel's time. A subject attorney receiving any kind of discipline shall reimburse the Bar for any costs and expenses assessed. Likewise, a Complaint Tribunal or the Court may, upon motion by the Bar, order the subject attorney to reimburse the Bar for the costs and expenses of litigation of a Formal Complaint or appeal.

(b) In addition to any costs and expenses assessed or reimbursement ordered in accordance with paragraph (a) of this Rule, the Commission on Attorney Discipline may impose an administrative fee of not less than two hundred fifty dollars (\$250.00) in any case where a private reprimand or public reprimand is imposed. A Complaint Tribunal or the Court may impose an administrative fee of not less than five hundred dollars (\$500.00) in any case where a private reprimand, public reprimand, suspension, disbarment, or probation is ordered.

(c) In any case where costs, expenses, and fees are assessed or ordered to be reimbursed, they shall be paid to the Mississippi Bar.

RULE 27. PRESERVATION OF EVIDENCE

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

RULE 28. SUBPOENA PURSUANT TO LAW OF ANOTHER JURISDICTION

Whenever a subpoena is sought in the State of Mississippi pursuant to the law of another jurisdiction for use in attorney discipline or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Clerk of the Court, upon request from the Office of General Counsel, and for good cause, may issue a subpoena as provided in this Rule to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement, or challenges to this subpoena shall be as provided in the Mississippi Rules of Civil Procedure.

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 are declared to be invalid or of no effect, the remaining parts shall be in no manner affected but shall remain in full force and effect.
- (c) Unless the contrary intent shall clearly appear in every amendment hereinafter made, each and every amendment to these Rules shall be read and construed as an integral part **of these Rules**.

Rule 6

1. **Proposed version—Includes Agreement Pursuant to Pretrial Intervention Act** (*Includes the Supreme Court's May 27, 2008, amendment*)

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, or tender a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (1972, **as amended**), **or execute an agreement pursuant to the Pretrial Intervention Act, Miss. Code Ann. § 99-15-101, et seq. (1972, as amended)**, or any similar provision in state or federal law 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 **proof of the finding of guilt**, or judgment of conviction, **tender of a plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the offer or tender of a guilty plea, **or the offer or tender of a guilty plea** pursuant to the provisions of Miss. Code Ann. § 99-15-26 (1972, **as amended**), **or the agreement pursuant to the Pretrial Intervention Act, Miss. Code Ann. § 99-15-101(1972, as amended)**, or any similar provision in state or federal law shall be presented to the Court by **General** Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order **the attorney's** 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 provisions of Miss. Code Ann. § 99-15-26 (1972, **as amended**), **or the Pretrial Intervention Act, Miss. Code Ann. § 99-15-101, et seq. (1972, as amended)**, 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, **or execution of an agreement under the Pretrial Intervention Act.**

(c) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall have entered against **the attorney** in any court of any state or in any federal court a civil judgment in accordance with Miss. Code Ann. § 11-49-3 (1972, **as amended**), 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 **General** 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 **from the registry of attorneys licensed to practice law in the State of Mississippi** and order **the attorney's** 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, **General** Counsel shall certify that result to the Court, and the Court shall forthwith enter an order of disbarment.

(e) Upon conviction of manslaughter, **General** Counsel shall immediately commence an investigation and where warranted shall, upon directive of the **Commission on Attorney Discipline**, present **the matter** to the Court for its consideration as herein set **forth**.

(f) The judge of any court within this state shall have the affirmative duty to cause a certified copy of **proof of the finding of guilt**, a judgment of conviction, **tender of a plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the offer or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (1972, **as amended**), **or agreement pursuant to the Pretrial Intervention Act, Miss. Code Ann. § 99-15-101, et seq. (1972, as amended)**, or any similar provision of state or federal law to be transmitted to General Counsel **within ten (10) days after the finding of guilt, tender of plea of guilty or plea of nolo contendere, or entry of the order accepting or acknowledging the offer or tender of the plea or agreement.**

Procedure

(6.1) A complaint, with a certified copy of **the finding of guilt, or judgment of conviction, or tender of plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the entry, offer, or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (1972, **as amended**), **or execution of an agreement under the Pretrial Intervention Act, Miss. Code Ann. § 99-15-101, et seq. (1972, as amended)**, or any similar provision of state or federal law attached, and a motion for **immediate** suspension **pending conclusion of the criminal proceedings, including** 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 **finding of guilt, judgment, or conviction** has been reversed or a new trial has been granted.

(6.2) Upon a showing that the **criminal proceedings have finally concluded**, 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, **General** Counsel shall file a complaint, with a certified copy of the judgment attached, which shall constitute a prima facie case.

(6.4) All proceedings brought pursuant to Rule 6 of these Rules shall in all respects be matters of public record, Rule 15 of these Rules notwithstanding.

2. Proposed version—Removes Agreement Pursuant to Pretrial Intervention Act (*Includes the Supreme Court's May 27, 2008, amendment*)

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, or tender a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (1972, **as amended**), or any similar provision in state or federal law 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 **proof of the finding of guilt**, or judgment of conviction, **tender of a plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the offer or tender of a guilty plea, or any similar provision in state or federal law shall be presented to the Court by **General** Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order **the attorney's** 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 provisions of Miss. Code Ann. § 99-15-26 (1972, **as amended**), 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 **the attorney** in any court of any state or in any federal court a civil judgment in accordance with Miss. Code Ann. § 11-49-3 (1972, **as amended**), 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 **General** 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 **from the registry of attorneys licensed to practice law in the State of Mississippi** and order **the attorney's**

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, **General** Counsel shall certify that result to the Court, and the Court shall forthwith enter an order of disbarment.

(e) Upon conviction of manslaughter, **General** Counsel shall immediately commence an investigation and where warranted shall, upon directive of the **Commission on Attorney Discipline**, present **the matter** to the Court for its consideration as herein set forth.

(f) The judge of any court within this state shall have the affirmative duty to cause a certified copy of **proof of the finding of guilt**, a judgment of conviction, **tender of a plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the offer or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (1972, **as amended**), or any similar provision of state or federal law to be transmitted to General Counsel **within ten (10) days after the finding of guilt, tender of plea of guilty or plea of nolo contendere, or entry of the order accepting or acknowledging the offer or tender of the plea or agreement.**

Procedure

(6.1) A complaint, with a certified copy of **the finding of guilt, or judgment of conviction, or tender of plea of guilty or plea of nolo contendere**, or order accepting or acknowledging the entry, offer, or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (1972, **as amended**), or any similar provision of state or federal law attached, and a motion for **immediate suspension pending conclusion of the criminal proceedings, including** 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 **finding of guilt**, judgment, or conviction has been reversed or a new trial has been granted.

(6.2) Upon a showing that the **criminal proceedings have finally concluded**, 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, **General** Counsel shall file a complaint, with a certified copy of the judgment attached, which shall constitute a prima facie case.

(6.4) All proceedings brought pursuant to Rule 6 of these Rules shall in all respects be matters of public record, Rule 15 of these Rules notwithstanding.

RULES OF DISCIPLINE STUDY COMMITTEE
SUMMARY OF PROPOSED AMENDMENTS

MISSISSIPPI ATTORNEY DISCIPLINARY RULES

The title is changed to better describe the purpose of the rules.

Part One. RULES OF DISCIPLINE—GROUNDS FOR DISCIPLINE

RULE 1

Rule 1.1 requires attorneys to register with the Bar annually and to notify the Bar in writing within 30 days of any change to the information on the registry. The address in the registry is the attorney's legal address for purposes of service and notice under these Rules.

RULE 2

Rule 2(a) changes the name of a Bar complaint to a grievance and uses the name "complaint" for what is currently referred to as the Formal Complaint process.

RULE 3

Rule 3(b) adds the Office of General Counsel as a separately designated disciplinary agency of the Court

Rule 3(c) changes the name of the Committee on Professional Responsibility to Commission on Attorney Discipline.

Rule 3.1 designates the LJAP as a special master of the Court for purposes of these Rules.

Rule 3.2 adds the Office of General Counsel's enabling language.



RULE 4

Rule 4(a) adds language directing attorneys on how to report to General Counsel to fulfill their 8.3, MRPC, obligation by allowing them to file a grievance or report the matter in writing.

Rule 4(c) adds language requiring that a grievance be filed on an original form to be provided by The Mississippi Bar.

Rule 4.1 removes the Executive Director of The Mississippi Bar from having an active role in the attorney discipline process. It also states that attorneys may state that they do not have a grievance against them until the AGC renders a decision imposing discipline or directing that a complaint be filed. (Dismissed grievances are vacated).

RULE 5

Rule 5.2 removes the time requirement that General Counsel investigate and report to the AGC within sixty days of the receipt of a grievance.

Rule 5.3 provides that the grievant is not a party, is not being represented by the Bar, and that failure of a grievant to continue participation in the disciplinary process is not cause for dismissal or termination of the disciplinary proceedings.

Rule 5.4 provides that the failure of an attorney to cooperate in the disciplinary process is not cause for dismissal or termination of the disciplinary proceedings. Further, failure of the attorney to appear at an investigatory hearing waive the attorney's right to cross examine witnesses, present evidence, or present witnesses at the investigatory hearing.

Rule 5.5 clarifies that the AGC cannot issues subpoenas and further clarifies that the Clerk of Supreme Court of Mississippi is the only authority who can issue subpoenas in attorney disciplinary matters.

RULE 6

See separate discussion of two versions.

RULE 7

Rule 7 changes include deleting references to the LJAP provision in Rule 3 based upon the suggestion that LJAP not be a designated disciplinary agent.

Rule 7.1 removes the involvement of the Executive Director.

Rule 7.2 provides additional details as to the types of investigations General Counsel can engage in and allows for some of those functions to be conducted by an investigator hired by the Bar.

Rule 7.3 removes the requirement that General Counsel file a complaint within thirty days after being directed by the AGC. It also changes the style of all complaints to be “In Re Discipline of _____.”

Rule 7.4 removes the docketing requirement of grievances by the Executive Director.

RULE 8

Rule 8.1 allows 30 days for the Complaint Tribunal to enter a scheduling order rather than 10.

Rule 8.4 allows 30 days for an attorney to answer a complaint rather than 20.

Rule 8.5 provides that trials be held in Jackson at the Supreme Court.

Rule 8.7 provides for Interim Suspension for Threat of Harm to the public on motion and hearing before the Complaint Tribunal.

RULE 9

No new provisions. All clean up language.

RULE 10

Rule 10 removes irrevocable resignations from this rule.

RULE 11

The proposed new rule deals with resignations. The irrevocable resignation provisions of Rule 10 are moved here.

A new provision for resigning while in good standing is proposed for this new rule. There is currently no provision in state law or in the Rules of Discipline for an attorney to resign while in good standing. The process set out in the new rule requires that there be no pending criminal charges, Bar complaints, or disciplinary investigations against the attorney and that the attorney be active and in good standing. In order to be reinstated, the attorney will have to go through Bar admissions. Jurisdiction remains with the Court and its designated disciplinary agencies to pursue complaints against the former attorney for conduct which occurred prior to the effective date of resignation while in good standing.

RULE 12

Rule 12(a) provides that suspensions and disbarments be effective 15 days from the filing of the order in order to allow time for the attorney to close the law practice in an orderly fashion and to protect clients.

Rule 12(c) provides that a suspended attorney may be placed on probation the terms of which may allow continued practice of law.

Rule 12(f) provides authority for OGC to file motions for contempt for failure of an attorney to abide by disciplinary orders.

Rule 12(g) provides authority to consider failure to comply with disciplinary orders during reinstatement.

Rule 12(h) clarifies that the administrator of the estate of an attorney can be considered a responsible party for purposes of closing the deceased attorney's law practice.

Rule 12.5 clarifies that the Bar is responsible for costs of expenses of receivers only when the closing of a law practice is the result of discipline (not death or disability).

RULE 13

Rule 13(c) adds civil judgments as outlined in Rule 6(c) to the list of disbarments that are ineligible for reinstatement.

Rule 13.1 provides that petitions for reinstatement from disbarment shall not be filed until 5 years after the date of disbarment rather than 3.

Rule 13.5 allows suspended and disbarred attorneys eligible for reinstatement to sit for the Bar exam and the Professional Responsibility Exam 6 months prior to the date they are eligible to apply for reinstatement.

Rule 13.7 increases the investigatory fee for reinstatement to \$1,000.00.

Rule 12.8 allows OGC 120 days to answer a petition for reinstatement.

RULE 14

Rule 14 completely rewrites the reciprocal discipline rule to include reciprocal disability inactive status.

Rule 14(a) places responsibility upon the attorney to notify OGC of discipline or inactive disability status in another jurisdiction upon threat of immediate suspension by petition of OGC.

Rule 14.1 makes clear that the procedure to file the certified copies of discipline or IDS in another jurisdiction is by complaint which the attorney may answer within 30 days.

Rule 14.2 makes clear that certified copies from another jurisdiction establishes conclusively the misconduct, the sole issue before the Court being appropriate discipline or transfer to IDS. The attorney has an opportunity to demonstrate that the imposition of the same discipline is not appropriate for the reasons specified in the rule or that the original reason for transfer to IDS no longer exists.

RULE 15

Rule 15 clarifies the entities to which immunity applies.

RULE 16

Rule 16(b) adds entities with which disciplinary agencies may share information without breaching confidentiality.

RULE 17

Rule 17 clarifies the Court's disciplinary jurisdiction over non-resident attorneys and those admitted pro hac vice for purposes of service of process and notice.

Part Two. PROCEEDINGS IN WHICH AN ATTORNEY IS DECLARED TO BE INCOMPETENT OR ALLEGED TO BE INCAPACITATED

The title is changed to better describe the purpose of these rules.

RULE 18

Clean up language only.

RULE 19

Provides that the Court or a Complaint Tribunal shall immediately transfer to inactive disability status an attorney who is judicially declared incompetent or is involuntarily committed on grounds of incompetency or disability.

RULE 20

Provides that the Court or a Complaint Tribunal shall transfer an attorney who claims inability to assist in defense of formal disciplinary proceedings to inactive disability status pending determination of incapacity. If the Court or Complaint Tribunal determines that the claim of incapacity is valid, the disciplinary proceedings are deferred until such time as the Court considers a petition to transfer the attorney to active status. If the Court or Complaint Tribunal determines the claim of incapacity is invalid, the disciplinary proceedings continue. Where a Complaint Tribunal makes the determination, appeals are available to both parties pursuant to Rule 21.

RULE 21

Sets out the procedure for determining incapacity. Generally, the proceedings are conducted before a Complaint Tribunal in the same manner as disciplinary proceedings, including appeals. The LJAP is specifically

designated as the program to which attorneys are referred for obtaining examination by medical experts, for evaluation, treatment, and monitoring.

RULE 22

Provides that transfer of an attorney to inactive disability status is a matter of public record but that medical evidence or other personal information remains confidential.

RULE 23

Specifically provides that an attorney transferred to inactive disability status cannot practice law.

RULE 24

Sets out the procedure for reinstatement of an attorney to active status. The process generally tracks the reinstatement process from disciplinary suspension or disbarment but also requires the attorney to include with the petition for reinstatement a status report from the LJAP regarding the attorney's treatment, monitoring, and compliance.

Part Three. MISCELLANEOUS

RULE 25

No substantive changes.

RULE 26

Rule 26(a) is completely rewritten to clarify the costs and expenses for which an attorney receiving discipline must reimburse the Bar.

Rule 26(b) adds an administrative fee of at least \$250.00 in cases where discipline is imposed by the Commission on Attorney Discipline and at least \$500.00 in cases where discipline is imposed by a Complaint Tribunal or Supreme Court.

Rule 26(c) clarifies that costs, expenses, and fees are payable to the Bar.

RULE 27

No substantive changes.

RULE 28

The proposed new rule adds a provision for issuance of subpoenas under the law of another jurisdiction for attorney discipline or disability proceedings. Such subpoenas only apply to discovery proceedings in attorney disciplinary matters. Approximately 20 other states have a similar provision for attorney disciplinary matters which Mississippi designated disciplinary agencies can take advantage of when necessary.

RULE 29

No substantive changes.

SUMMARY OF RULE 6 VERSIONS AND DISCUSSION

The Board was divided on the issue of including agreements executed pursuant to the Pretrial Intervention Act as a ground for suspension or disbarment based on other proceedings. Therefore, it voted to present both versions to the Court for its consideration. A summary of both versions as well as a summary of the predominant viewpoints follows:

1. Proposed version—Includes Agreement Pursuant to Pretrial Intervention Act

RULE 6

Rule 6(a) adds agreements pursuant to the Pretrial Intervention Act to the kinds of guilty pleas that will result in a Rule 6 Formal Complaint. Also included are proof of the finding of guilt and tender of a guilty plea or plea of nolo contendere as triggers for the filing of a Rule 6 Formal Complaint.

Rule 6(f) adds a requirement that courts send OGC a certified copy of proof of the finding of guilt or tender of a guilty plea or plea of nolo contendere within 10 days.

Rule 6.1 adds proof of the finding of guilt and tender of a guilty plea or plea of nolo contendere as triggers for the filing of a Rule 6 Formal Complaint as well as guilty pleas entered under the Pre-trial Intervention Act and allows for the filing a motion for immediate suspension pending conclusion of the criminal proceedings.

DISCUSSION:

The argument that Pretrial Intervention Act agreements should trigger Rule 6 suspension and disbarment centers around concern for protection of the public and preservation of the integrity of the profession. For purposes of regulating the legal profession, immediate suspension and disbarment should be triggered by the underlying conduct that led to the criminal proceedings. Attorneys who plead guilty, or agree to plead guilty should

they fail to adhere to pre-trial intervention requirements, to conduct that would result in a felony conviction but for non-adjudication or pre-trial intervention should not be allowed the privilege of practicing law, just as attorneys are not allowed to practice law upon conviction or entry of a “straight up” guilty plea for the same kind of conduct.

2. Proposed version—Removes Agreement Pursuant to Pretrial Intervention Act

RULE 6

Allows proof of the finding of guilt and tender of a guilty plea or plea of nolo contendere to trigger the filing of a Rule 6 Formal Complaint.

Rule 6(f) adds a requirement that courts send OGC a certified copy of proof of the finding of guilt or tender of a guilty plea or plea of nolo contendere within 10 days.

Rule 6.1 allows proof of the finding of guilt and tender of a guilty plea or plea of nolo contendere to trigger the filing of a Rule 6 Formal Complaint and allows filing a motion for immediate suspension pending conclusion of the criminal proceedings.

DISCUSSION:

The proponents of not including Pretrial Intervention Act agreements in Rule 6 believe that such agreements provide the prosecution with a valuable tool to allow attorneys to keep their professional licenses with a form of probation wherein they are monitored over a period of time. Other professions, such as doctors, nurses, dentists, and pharmacists, utilize pretrial intervention/diversion programs to rehabilitate members of their professions; attorneys should likewise be afforded this opportunity.

Judges and prosecutors, both state and federal, are extremely serious about these cases and do not hand out pretrial intervention/diversion opportunities lightly. Immediate suspension of an attorney’s license upon execution of a pretrial intervention agreement could actually prove counterproductive in the long run in terms of rehabilitation incentive for the attorney.

Should pretrial intervention/diversion fail, the prosecution will move forward to obtain a felony conviction which will then trigger a Rule 6

complaint. In addition, the attorney's underlying conduct could still be subject to the Bar complaint process outside of Rule 6 considerations.