

RULE 12. Reinstatement

(a) No person disbarred or suspended for a period of six (6) months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court.

(b) Reinstatement to the practice of law following any other ~~discipline~~ suspension shall be only upon proof of compliance with any such sanctions. Reinstatement to the practice of law following an attorney's transfer to disability inactive status is governed by Rule 23 of these Rules.

(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

(12.1) Disbarments. The petition for reinstatement shall not be filed until ~~three (3)~~ five (5) years after the date the order of disbarment became final.

(12.2) Suspensions. A petition for reinstatement shall be required in all cases of suspension for a period of six (6) months or more. In cases of suspension pending satisfaction of conditions precedent, reinstatement shall not be permitted except upon proof that the conditions have been met.

(12.3) Suspensions - Revocation of Probation. Probation may be revoked upon clear and convincing proof that the attorney has failed to meet the terms of the probation. It shall be the duty of ~~Complaint Counsel~~ Committee on Professional Responsibility to monitor such suspensions with probation, to receive any reports which the attorney may be required to submit, and to take such action as may be appropriate in the circumstances.

(12.4) Suspensions - Time for Filing Petitions for Reinstatement. A suspended attorney shall not file a petition for reinstatement until the expiration of the period of suspension and all conditions precedent are met. ~~In cases of suspension of six months or longer pending satisfaction of conditions precedent, the petition for reinstatement may be filed immediately upon the attorney's meeting these conditions.~~

(12.5) Examination Requirements. ~~No sooner than six (6) months prior~~ Subsequent 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 a scaled score of not less than 80, if the Complaint Tribunal determines, on a case-by-case basis, that good cause exists to require the applicant for reinstatement to take such test.~~ ~~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, prior to reinstatement,~~ 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 ~~to the bar~~ of new attorneys ~~to the Bar~~ as well as passing ~~and~~ the Multi-State Professional Responsibility Exam with the score required for admission of new ~~lawyers~~ attorneys to the Bar.

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

(12.7) Contents of Reinstatement Petitions - 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~~ the 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 ~~\$500.00~~ \$1,000.00 shall be paid to the Bar, ~~same to be in addition to any other sum due the Bar, or~~ ~~and in addition to restitution due~~ to persons injured by the petitioner's improper conduct. The matters set out in this paragraph ~~shall be~~ are jurisdictional.

(12.8) Board of Commissioners for the Bar. Upon receipt of the reinstatement petition, the Court shall allow ~~Complaint Counsel~~ the Board of Bar Commissioners ~~thirty (30)~~ ~~one hundred twenty (120)~~ days within which to conduct an investigation and fully answer the petition. ~~The Board shall determine, based upon Complaint Counsel's investigation, whether the Bar supports the attorney's reinstatement.~~ ~~Upon filing of the Bar's answer,~~ ~~After filing of pleadings or notice on behalf of the Bar,~~ the proceedings shall continue, ~~if necessary or desirable,~~ as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

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

Rule 13. — Discipline in Another Jurisdiction

When an attorney should be subjected to disciplinary sanctions in another jurisdiction, such sanction shall be grounds for disciplinary action in this state, and certification of such sanction by the appropriate authority of such jurisdiction to the Executive Director of the Bar or to the Court, shall be conclusive evidence of the guilty of the offense or unprofessional conduct on which said sanction was ordered, and it will not be necessary to prove the grounds for such offense in the disciplinary proceedings in this state. The sole issue to be determined in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed on the attorney, which may be less or more severe than the discipline imposed by the other jurisdiction.

Rule 13. 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 the Complaint 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 Complaint Counsel, result in the immediate suspension of the attorney pending final resolution by the Court. The three (3) year limitations period provided in Rule 4(d) of these Rules shall not begin to run until the Bar has been given written notice of the discipline imposed by a Bar or court of another jurisdiction.

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

(c) Upon notification from any source that an attorney admitted to practice in the State of Mississippi has been transferred to disability inactive status in another jurisdiction, Complaint Counsel shall obtain a certified copy of the order and file it with the Court. A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi should be transferred to disability inactive status shall establish conclusively the disability for purposes of a disability proceeding in the State of Mississippi as contemplated in Rule 20 of these Rules.

Procedure

(13.1) Upon receipt by Complaint Counsel the Executive Director 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, of disciplinary sanctions imposed by the bar or a court in another jurisdiction or by a Mississippi trial court or local bar association upon an attorney subject to these rules, the Executive Director shall immediately docket same as a complaint, charge or grievance and shall immediately forward the matter to Complaint Counsel. Complaint Counsel shall present certified copies to the Court by filing a complaint and serving it upon the attorney of the disciplinary action of the other court or Bar to the Court wherein the sole issue in a disciplinary case to be determined shall be the extent of final discipline to be imposed on the attorney in this state the State of Mississippi, which discipline may be less or more severe then 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.

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

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

(13.3) In the case of an attorney's transfer to disability inactive status in another jurisdiction, the Court shall transfer the attorney to disability inactive status unless the attorney demonstrates or the Court finds that the reason for the original transfer to disability inactive status no longer exists.

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

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

Rule 17. ~~Personal Incapacity – Meaning of Term “Personally Incapable” of Practicing Law~~ Incapacity Defined

For purposes of Rules 17 through ~~23~~ 25, the term “~~personally incapable~~” of practicing law “~~incapacitated~~” shall include (a) suffering from mental or physical illness of such nature as to render the person afflicted incapable of managing himself, his affairs, or the affairs of others with the integrity and competency requisite for the proper practice of law; or (b) habitual use of alcoholic beverages, or liquids of any alcoholic content, hallucinogens, sedatives, drugs, narcotics or other mentally or physically disabling substance of any character whatsoever to any extent which impairs or tends to impair the ability to conduct efficiently and properly, the affairs undertaken for a client in the practice of law.

Rule 18. ~~PERSONAL INCAPACITY - DISABILITY INACTIVE STATUS~~ Involuntary Commitment or Adjudication of Incompetency

Whenever it has been determined that any attorney subject to the disciplinary jurisdiction of the Court is ~~personally incapable of practicing law~~, he shall be transferred to disability inactive status and not permitted to practice law until further order from the Court. ~~If an attorney has been judicially declared incompetent, is involuntarily committed on the grounds of incompetency or disability, or upon the transfer of an attorney to disability inactive status in another jurisdiction, 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 Complaint Counsel within ten (10) days after the entry of such order.~~

Rule 19. ~~PERSONAL INCAPACITY - PROCEEDINGS - CIRCUMSTANCES SHOWING EXISTENCE OF CONDITION~~ Inability to Properly Defend

~~Proceedings, including appeals, to determine whether an attorney is personally incapable of practicing law shall be instituted and conducted in the same manner and upon the same procedure as disciplinary proceedings, except as otherwise set out in Rules~~

~~17 through 25. In addition to, and without exclusion of any other circumstances, cause to believe that an attorney may be personally incapable of practicing law shall exist whenever information is received that such member (a) has interposed successfully a defense of mental incompetence to secure abatement of or to defeat an adverse determination in a disciplinary proceeding brought against him in any tribunal in any jurisdiction, (b) has defended, upon like grounds, a suit brought against him in any tribunal in any jurisdiction, (c) has been judicially declared incompetent, or (d) has been legally committed to an institution for the treatment of mental illness.~~

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

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

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

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

Rule 20. ~~PERSONAL INCAPACITY - REPRESENTATION BY COUNSEL -~~ ~~GUARDIAN~~ Proceedings to Determine Incapacity and Reciprocal Disability Inactive Status

~~In proceedings under Rules 17-25, the attorney shall be entitled to representation by counsel. An attorney who has been declared mentally incompetent, judicially, or who has been committed, judicially, to an institution for the treatment of the mentally ill shall be defended by his legally appointed guardian or guardian ad litem, if any; if a guardian or guardian ad litem has not been appointed, the Court or Tribunal shall appoint a guardian ad litem. The same procedure shall apply to an attorney who has asserted his incompetence, or whose incompetence to defend becomes apparent during the proceedings. In all cases, counsel previously selected by the attorney will be appointed guardian ad litem, absent clear and compelling reasons to the contrary.~~

(a) Information relating to an attorney's physical or mental condition which adversely affects the attorney's ability to practice law shall be investigated and where warranted, shall be the subject of formal proceedings to determine whether the attorney shall be transferred

to disability inactive status. The hearings shall be conducted before a Complaint Tribunal in the same manner as disciplinary proceedings, including appeals, except that the hearings to determine incapacity shall be confidential.

The Complaint Tribunal shall provide for such notice to the attorney of proceedings in the matter in accordance with Rule 4(d)(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.

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

Rule 21. ~~PERSONAL INCAPACITY - SERVICE ON ATTORNEY WHO HAS BEEN COMMITTED OR DECLARED INCOMPETENT~~ Transfer to Disability Inactive Status a Matter of Public Record

~~Service of process or notice to an attorney who has been committed or declared incompetent shall be accomplished in the same manner as that for process on incompetents in proceedings in the chancery court of Mississippi. After the appointment of a guardian ad litem, notice shall be served upon said guardian ad litem.~~
The transfer of an attorney to disability inactive status shall be a matter of public record. Documents relating to medical evidence or other personal information regarding the attorney shall remain confidential.

~~RULE 22. PERSONAL INCAPACITY - SUFFICIENCY AS EVIDENCE, OF COURT ORDER OF INCOMPETENCE OR COMMITMENT~~ Attorney Transferred to Disability Inactive Status Not Permitted to Practice Law

A certified copy of the court order declaring an attorney mentally incompetent, or an order of commitment if he has been committed to an institution for the mentally incompetent, shall constitute sufficient evidence that said attorney is personally incapable of practicing law, if such is not successfully rebutted.

~~RULE 23. PERSONAL INCAPACITY - MENTAL EXAMINATION AND REPORTS~~

~~In any proceeding where mental incompetency is an issue, the attorney may be required to submit to a mental examination by one or more practicing psychiatrists selected by the Complaint Tribunal after its designation, or the Court. Reports of physicians regarding the mental condition of an attorney may be received as probative evidence, if the physicians are available for cross-examination.~~

~~RULE 24. PERSONAL INCAPACITY - JUDGMENT~~

~~If a Tribunal or the Court finds an attorney personally incapable of practicing law, the Court or Tribunal shall enter an order placing the attorney on disability inactive status, and the attorney~~ 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 25~~ 23. PERSONAL INCAPACITY - REINSTATEMENT PROCEDURES 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 suspended because of personal incapacity to practice law 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, and it shall be under a duty to investigate the matter, respond to the petition and appear at the hearing. The petitioner shall be required to supply such supporting proof of personal capacity as may be necessary and, in addition, the attorney may be required to submit to examinations by

~~physicians or psychiatrists selected by the Court. If satisfied that the attorney has regained his capacity to practice law, the Court may reinstate the petitioner to the practice of law and enter judgment accordingly; provided, however, no judgment of reinstatement shall be entered by default or on an ex parte basis, and in all cases the Court shall hear the Bar. A filing fee of two hundred fifty dollars (\$250.00) to defray the expense of investigating the matter~~ An investigatory fee of \$1,000.00 shall be paid to the Bar in addition to any other sum due to the Bar, upon the filing of each petition for reinstatement, and any petition for reinstatement subsequent to the initial petition shall not be filed within six (6) months from the date of an adverse determination of any prior petition.

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

The Bar shall be given one hundred twenty (120) days within which to conduct an investigation and fully answer the petition. The Bar shall determine, based upon Complaint 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 any pending disciplinary matters that were held in abeyance upon the attorney's transfer to disability inactive status. Pending final resolution of any such disciplinary matters, the Court may, upon motion of the Bar, place the attorney on interim suspension.