

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-BD-00820-SCT

THE MISSISSIPPI BAR

v.

SEAN P. MOUNT

ATTORNEY FOR COMPLAINANT: MELISSA SELMAN SCOTT
ATTORNEYS FOR RESPONDENT: ANDREW J. KILPATRICK, JR.
KRISTEN J. SWEARENGEN
NATURE OF THE CASE: CIVIL - BAR MATTERS
DISPOSITION: SUSPENDED FROM THE PRACTICE OF
LAW FOR A PERIOD OF ONE YEAR AND
ONE DAY, WITH ENTIRE SUSPENSION
DEFERRED - 12/12/2019
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

CHAMBERLIN, JUSTICE, FOR THE COURT:

¶1. The Mississippi Bar filed a formal complaint against Sean P. Mount seeking reciprocal discipline after the Supreme Court of Louisiana suspended Mount from practicing law for one year and one day, with the entire suspension deferred. The Bar requests that this Court appropriately discipline Mount, but it does not recommend the imposition of any specific punishment.

FACTS AND PROCEDURAL HISTORY

¶2. Sean P. Mount is a resident of Louisiana and has been a member of the Louisiana Bar since 2001 and the Mississippi Bar since 2004. At approximately 1:30 a.m. on January 26, 2017, a New Orleans police officer observed Mount driving the wrong direction on a one-way street. The officer arrested Mount and charged him with operating a vehicle while intoxicated (first offense) and violating “La. Rev. Stat. § 32:72 (driving on roadway landed for traffic).” Mount pleaded guilty to the misdemeanor DWI offense on March 14, 2018.

¶3. The Office of Disciplinary Counsel (ODC) for the Louisiana Attorney Disciplinary Board opened an investigation into Mount’s arrest and plea. Mount cooperated with the investigation and listed two prior DWI arrests that had occurred approximately eighteen and twenty-four years before. These arrests occurred before Mount became an attorney. As part of the investigation, Mount agreed to undergo a substance-use disorder evaluation and voluntarily entered into a two-year diagnostic-monitoring agreement with the Judges and Lawyers Assistance Program (JLAP) on July 23, 2018. A report based on the evaluation classified Mount’s intoxication the night of his arrest as “an isolated case of excessive drinking” and “did not recommend formal treatment.” The evaluators did recommend that Mount be monitored for two years.

¶4. Before formal charges were filed, Mount and the ODC submitted a joint petition for consent discipline under Louisiana Supreme Court Rule XIX, Section 20. The parties stipulated that Mount had violated Rule 8.4(b) of the Louisiana Rules of Professional Conduct, which prohibits committing a criminal act that reflects adversely on the lawyer’s

honesty, trustworthiness or fitness as a lawyer.

¶5. On January 8, 2019, the Supreme Court of Louisiana accepted the joint petition and suspended Mount from the practice of law in Louisiana for a period of one year and one day, with the entire suspension deferred. Along with the suspension, the Supreme Court of Louisiana placed Mount on probation for a period that coincided with the term of his two-year JLAP diagnostic-monitoring agreement.

¶6. By order dated April 4, 2019, the United States District Court for the Eastern District of Louisiana imposed the same discipline as the Supreme Court of Louisiana. The District Court imposed the suspension retroactively to the effective date of the Supreme Court of Louisiana's order.

¶7. On May 14, 2019, the Mississippi Bar filed a complaint against Mount seeking reciprocal discipline under Rule 13 of the Rules of Discipline for the Mississippi State Bar. The Bar requests that this Court appropriately discipline Mount and that Mount pay the costs and expenses of these proceedings.

¶8. Mount responded to the Mississippi Bar's complaint on June 5, 2019. Mount admitted each allegation and agreed that the Mississippi Bar is entitled to recover any costs and expenses associated with presenting this matter to the Court. In his response, Mount acknowledges that "the sanction imposed in this State generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction's sanction." (emphasis omitted) (internal quotation marks omitted) (quoting *Miss. Bar v. Ishee*, 987 So. 2d 909, 911 (Miss. 2007)). Mount,

however, requests that this Court retroactively impose a suspension of less than six months due to the differences between the reinstatement procedures of Mississippi and Louisiana. In addition to the mitigation factors considered by the Supreme Court of Louisiana in the joint petition,¹ Mount offers a number of mitigating factors to support his request for a shorter retroactive sanction.

DISCUSSION

¶9. This Court possesses the exclusive and inherent jurisdiction over matters pertaining to attorney discipline. M.R.D. 1(a). This Court has jurisdiction over Mount for disciplinary purposes after proper service under Rule 16 of the Mississippi Rules of Discipline.² Under Rule 13(b) of the Mississippi Rules of Discipline, the decree of the Supreme Court of Louisiana “establish[es] conclusively the misconduct” of Mount.³ M.R.D. 13(b). Therefore,

¹ The mitigating factors considered by the Supreme Court of Louisiana in the joint petition included the following:

1. Absence of a prior disciplinary record;
2. Absence of a dishonest or selfish motive;
3. Full and free disclosure to disciplinary board and cooperative attitude toward proceedings;
4. Character or reputation;
5. Imposition of other penalties or sanctions; and
6. Remorse.

² As a nonresident Mississippi-licensed attorney, the Mississippi Bar properly served Mount with process in accordance with Rule 16. The Mississippi Bar served Mount with process on May 15, 2019, by serving the executive director of the Bar and by mailing a copy of the notice, summons and formal complaint to Mount’s last known address by certified mail, return receipt requested consistent with the requirements of Rule 16(a) of the Mississippi Rules of Discipline.

³ Rule 13(b) provides as follows:

“the sole issue before this Court is the discipline to be imposed.” *Miss. Bar v. Clegg*, 255 So. 3d 150, 152 (Miss. 2017) (citing M.R.D. 13(b)).

¶10. As acknowledged by Mount, “the sanction imposed in this State generally mirrors the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction’s sanction.” *Id.* at 153 (internal quotation marks omitted) (quoting *Ishee*, 987 So. 2d at 911). This Court, however, “may impose sanctions less than or greater than those imposed by another jurisdiction.” *Ishee*, 987 So. 2d at 911 (citing *Miss. Bar v. Gardner*, 730 So. 2d 546, 547 (Miss. 1998)). “The accused attorney may offer this Court any mitigating factors which he thinks serve to diminish his culpability and subsequently diminish the severity of the sanction to be imposed by this Court.” *Miss. Bar v. Dorhauer*, 38 So. 3d 610, 613 (Miss. 2009) (citing *Miss. Bar v. Strauss*, 601 So. 2d 840, 844 (Miss. 1992)). Last, this Court considers nine criteria in determining appropriate reciprocal discipline:

- (1) the nature of the misconduct involved;
- (2) the need to deter similar misconduct;
- (3) the preservation of the dignity and reputation of the profession;
- (4) the protection of the public;
- (5) the sanctions imposed in similar cases;
- (6) the duty violated;
- (7) the lawyer’s mental state;
- (8) the actual or potential injury resulting from the misconduct; and
- (9) the existence of aggravating and/or mitigating factors.

Clegg, 255 So. 3d at 152–53 (Miss. 2017) (quoting *Miss. Bar v. Hodges*, 949 So. 2d 683,

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.

M.R.D. 13(b).

686 (Miss. 2006)).

¶11. It is evident from the joint petition for consent discipline that the Louisiana Supreme Court “directly or implicitly considered the above-referenced criteria.” *Id.* at 153 (internal quotation marks omitted) (citing *Miss. Bar v. Inserra*, 38 So. 3d 605, 607 (Miss. 2009)). Therefore, this Court need only consider the additional mitigating factors that Mount presents to support his request for a shorter retroactive suspension. These factors include the following: Mount’s completion of individualized therapy and continued compliance with the JLAP diagnostic-monitoring agreement; Mount’s clean disciplinary record since being admitted to the Mississippi Bar in 2004 and Mount’s acceptance of responsibility for the misconduct without contest. Mount also emphasizes that he is allowed to practice law during his suspension due to the Supreme Court of Louisiana’s deferment of his entire suspension. Furthermore, Mount points out that the misconduct did not occur in Mississippi and that no Mississippians were harmed.

¶12. Noting the differences between Louisiana’s and Mississippi’s reinstatement procedures, Mount also contends that a suspension of less than six months would appropriately mirror the sanction imposed by Louisiana. Under Rule XIX of the Louisiana Supreme Court Rules: Rules for Lawyer Disciplinary Enforcement, Louisiana requires an attorney who is suspended for one year or less not including any periods of deferment to file an affidavit for reinstatement. Therefore, Mount need only submit an affidavit to be reinstated in Louisiana. In contrast, Mississippi requires an attorney who has been suspended

for six months or more to petition this Court for reinstatement. M.R.D. 12(a).⁴

¶13. Although the reinstatement procedures differ between Louisiana and Mississippi, these differences are not “extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction’s sanction.” *Ishee*, 987 So. 2d at 911 (citing *Miss. Bar v. Drungole*, 913 So. 2d 963, 970 (Miss. 2005)). Rule 12 governs reinstatement to the Mississippi Bar. Rule 12’s requirements are merely a consequence of Mount’s being suspended in Mississippi and are not part of the substantive sanction itself.

¶14. As “the ultimate judge of matters arising under the Rules of Discipline for the Mississippi Bar,” this Court has the exclusive and inherent authority to shorten Mount’s suspension and lift Rule 12’s petition requirement. *Broome v. Miss. Bar*, 603 So. 2d 349, 354 (Miss. 1992) (providing for automatic reinstatement despite Rule 12’s petition requirement) (citing Miss. Code Ann § 73-3-303 (Supp. 1991)); *see also Ishee*, 987 So. 2d at 913 (requiring petition for reinstatement although not required under Rule 12). However, with deference given to the Louisiana Supreme Court in light of the additional mitigating factors discussed above, we find that no extraordinary circumstances support deviation from Louisiana’s suspension. That said, we decline to shorten Mount’s suspension or to lift Rule

⁴ In addition to the petition requirement, Rule 12.5 of Mississippi Rules of Discipline, as amended July 1, 2019, now requires an attorney that has been suspended for six months or longer to take the Multi-State Professional Responsibility Exam (MPRE). Under the previous Rule 12.5, which was in effect at the time the Mississippi Bar filed this complaint, it was within the Bar’s discretion to recommend that Mount take the MPRE. The Bar, however, did not request that Mount be required to take the MPRE.

12's petition requirement.⁵

¶15. Mount also suggests that under this Court's case law, a retroactive suspension, if any, would be more appropriate. This Court may retroactively apply reciprocal attorney discipline. See *Hodges*, 949 So. 2d 683 (Miss. 2006) (ordering a one-year retroactive reciprocal suspension); see also *Miss. Bar v. Thompson*, 5 So. 3d 330 (Miss. 2008); *Miss. Bar v. Caldwell*, 890 So. 2d 855 (Miss. 2004). In determining whether to impose attorney discipline retroactively or prospectively, this Court considers the following factors:

[W]hether the conduct is part of a continuing pattern or whether there is only a single instance of misconduct; whether there is a significantly attenuated relationship between the misconduct and the practice of law; and whether the passage of time mitigates the severity of the discipline required. The last factor—the remoteness of the misconduct—has two facets. The first is whether the passage of time itself has accomplished rehabilitation of the lawyer. The second is whether the transgressions are so remote in time that intervening developments and current circumstances dilute the public interest in proper and prompt discipline.

Thompson, 5 So. 3d at 339–40 (quoting *People v. Abelman*, 804 P.2d 859, 862 (Colo. 1991)).

¶16. Under these factors, Mount suggests that his misconduct was an isolated event that caused no actual harm to any client or third party. Further, Mount asks that this Court consider the Supreme Court of Louisiana's complete deferment and the retroactive suspension imposed by the federal district court as sufficient intervening developments and circumstances that dilute the public interest in proper and prompt discipline and that support

⁵ Because this is a reciprocal-discipline case, we defer to our sister state's decision that a one year and one day suspension was appropriate. We note, however, that generally a first-offense misdemeanor DUI would not warrant an initial one year and one day suspension absent other aggravating circumstances.

retroactive application. Finally, Mount believes that his completion of individualized therapy and continued compliance with the JLAP diagnostic monitoring agreement support a retroactive application.

¶17. We acknowledge and accept the mitigating factors pointed out by Mount in his request for a retroactive suspension. Further, we find that Mount's misconduct was rather attenuated from the practice of law. Therefore, we impose Mount's suspension retroactively to January 8, 2019, to coincide with the effective date that Mount was suspended in Louisiana.

CONCLUSION

¶18. Accordingly, Sean P. Mount is hereby suspended from the practice of law in Mississippi for a period of one year and one day, with the entire suspension deferred. We find that a retroactive suspension with an effective date of January 8, 2019, is appropriate but that Mount must petition this Court for reinstatement under Rule 12, proving his compliance with the terms of his suspension in Louisiana. Mount will not be required to take the MPRE before reinstatement. Finally, all costs associated with this disciplinary action are assessed to Mount.

¶19. SEAN P. MOUNT IS SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE YEAR AND ONE DAY, WITH THE ENTIRE SUSPENSION DEFERRED, RETROACTIVE TO JANUARY 8, 2019. THE COSTS AND EXPENSES OF THESE PROCEEDINGS ARE ASSESSED TO MOUNT.

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ., CONCUR.