

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99010-SCT

IN RE: RULES OF DISCIPLINE FOR THE MISSISSIPPI BAR

ORDER

This matter has come before the Court en banc on the Court's own motion for consideration of an amendment to Rule 9 of the Rules of Discipline for the Mississippi Bar. Having considered the proposal, the Court finds that such amendment will promote the fair and efficient administration of justice in the state and should be adopted.

IT IS THEREFORE ORDERED that Rule 9 of the Rules of Discipline for the Mississippi Bar be and the same is hereby amended as set forth in Exhibit "A" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and that a true certified copy be forwarded forthwith to West Publishing Company for publication in *Southern Reporter Second (Mississippi Edition)* and the *Mississippi Rules of Court*.

SO ORDERED, this the 27th day of March, 2001.

/s/ Fred L. Banks, Jr.

FRED L. BANKS, JR., PRESIDING JUSTICE, FOR THE COURT

EXHIBIT "A"

RULES OF DISCIPLINE FOR THE

MISSISSIPPI STATE BAR

RULE 9. APPEALS

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

(b) Where the 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) Who May Take an Appeal. Either the Board or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether General Counsel shall take an

appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the 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) Taking an Appeal. Any notice of appeal shall be filed and served on all opposing counsel within thirty (30) days of the date on which the Tribunal's judgment was filed with the Clerk of the Court and by paying within that time, all sums assessed as costs and expenses. 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 as in other civil cases.

(9.3) Distribution of Opinion and Judgment and Supersedeas. No private reprimand shall issue within thirty (30) days provided for taking an appeal or until the Court has disposed of any appeal. ~~Judgment of public reprimand, suspension or disbarment shall immediately become a matter of public record, but an~~ and an appeal duly perfected, as provided above, from a judgment of the tribunal imposing discipline of suspension for not more than six months shall operate as supersedeas except for making public the imposition of such public discipline or as provided in Rules 6(a) and 10, and the accused 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 months or more and those imposing disbarment, supersedeas shall be within the sound discretion of the Tribunal, subject to review by this Court, upon application of the accused attorney made within thirty days of the entry of the judgment. In ruling upon such application, the 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 Tribunal may be made to this Court or to a justice of this Court, but the motion shall show that the application to the Tribunal for relief sought is not practicable, or that the Tribunal has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the Tribunal for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. The applicant shall file an original and four (4) copies of the motion for stay and, if the motion is opposed, shall attach legible copies of the documents specified in M.R.A.P. 8(e) for appeals under those rules.

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

(9.4) Extent of Appellate Review. Upon appeal the Court shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate. In so ruling, the Court shall not be bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is

manifestly wrong. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate.

[Amended January 2, 1985; amended effective December 5, 1988; 9.3 amended effective as to appeals from complaint tribunals perfected from and after July 1, 1995; amended effective March 29, 2001.]