

By: Simpson

To: Judiciary A

HOUSE BILL NO. 1135
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 73-3-101, 73-3-103, 73-3-105,
2 73-3-107, 73-3-109, 73-3-111, 73-3-113, 73-3-115, 73-3-117,
3 73-3-119, 73-3-120, 73-3-121, 73-3-123, 73-3-125, 73-3-127,
4 73-3-129, 73-3-131, 73-3-133, 73-3-135, 73-3-137, 73-3-139,
5 73-3-140, 73-3-141, 73-3-143, 73-3-145 AND 73-3-171, MISSISSIPPI
6 CODE OF 1972, WHICH CREATE THE MISSISSIPPI BAR AND THE STATE BOARD
7 OF BAR COMMISSIONERS; TO REENACT SECTIONS 73-3-301, 73-3-303,
8 73-3-305, 73-3-307, 73-3-309, 73-3-310, 73-3-311, 73-3-313,
9 73-3-315, 73-3-317, 73-3-319, 73-3-321, 73-3-323, 73-3-325,
10 73-3-327, 73-3-329, 73-3-331, 73-3-333, 73-3-335, 73-3-337,
11 73-3-339, 73-3-341, 73-3-343, 73-3-345, 73-3-347, 73-3-349,
12 73-3-351, 73-3-353, 73-3-355, 73-3-357, 73-3-359, 73-3-361,
13 73-3-363, 73-3-365, 73-3-367, 73-3-369, 73-3-371 AND 73-3-373,
14 MISSISSIPPI CODE OF 1972, WHICH PROVIDE PROCEDURES TO DISCIPLINE
15 AND TO DETERMINE PERSONAL INCAPACITY TO PRACTICE LAW; TO AMEND
16 SECTION 73-3-403, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER
17 ON THE MISSISSIPPI BAR; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 SECTION 1. Section 73-3-101, Mississippi Code of 1972, is
20 reenacted as follows:

21 73-3-101. The resident lawyers now authorized to practice
22 law in the State of Mississippi are hereby and herewith
23 constituted an association which shall be known as the Mississippi
24 Bar.

25 SECTION 2. Section 73-3-103, Mississippi Code of 1972, is
26 reenacted as follows:

27 73-3-103. All resident persons now or hereafter admitted to
28 practice law in the state shall be members of this association.

29 SECTION 3. Section 73-3-105, Mississippi Code of 1972, is
30 reenacted as follows:

31 73-3-105. The bar shall elect a president, a first vice
32 president and president-elect, and a second vice president, who
33 shall each serve for a term of one (1) year. None of such

34 officers shall be eligible to succeed himself.

35 The bar shall adopt bylaws for its government, fixing the
36 term of office for the officers and members of the Board of
37 Commissioners, providing for the times and methods of the election
38 of officers and members of the Board of Commissioners, authorizing
39 sections of the bar, providing for committees through which the
40 activities of the bar would be carried on, prescribing the methods
41 by which the time for the annual meetings of the bar and of the
42 Board of Commissioners shall be set, prescribing the manner in
43 which special meetings of the officers, the board, and the bar may
44 be called and held, authorizing the board to elect an executive
45 committee with a determination of its composition and what powers
46 may be delegated to such executive committee, and covering other
47 proper subjects. Such bylaws shall not be inconsistent with the
48 provisions of this chapter.

49 SECTION 4. Section 73-3-107, Mississippi Code of 1972, is
50 reenacted as follows:

51 73-3-107. The bar shall be controlled and governed by a
52 Board of Commissioners consisting of as many members as shall be
53 established by the bylaws of the bar or any amendments thereto,
54 adopted at an annual meeting of the bar.

55 SECTION 5. Section 73-3-109, Mississippi Code of 1972, is
56 reenacted as follows:

57 73-3-109. At all meetings of the Board of Commissioners a
58 majority of the entire membership shall constitute a quorum for
59 action upon any questions that may come before the board except
60 such questions as this article or the bylaws of the organization
61 may require to be passed upon by a larger portion of the
62 membership.

63 SECTION 6. Section 73-3-111, Mississippi Code of 1972, is
64 reenacted as follows:

65 73-3-111. A secretary, who may be designated as executive
66 director, shall be elected by the Board of Commissioners and shall
67 hold office for one (1) year.

68 The secretary shall keep and maintain rolls which shall
69 contain the name and place of residence of every lawyer in the
70 state. He may adopt such means as he thinks best to make the

71 rolls accurate and complete. There shall be made a separate roll
72 for each circuit court district.

73 The secretary shall keep minutes of all meetings of the Board
74 of Commissioners and such minutes, signed by the chairman and
75 secretary, shall be the evidence of the proceedings had and
76 actions taken by the board. He shall also keep the minutes of
77 each meeting of the bar, which minutes signed by him and by the
78 presiding officer shall be evidence of the proceedings had and
79 actions taken by the bar.

80 SECTION 7. Section 73-3-113, Mississippi Code of 1972, is
81 reenacted as follows:

82 73-3-113. The secretary shall also perform the duties of
83 treasurer. He shall make bond for the safe handling of all funds
84 for which he may become responsible, the bond to be in such
85 penalty, with such sureties, and conditioned as the Board of
86 Commissioners may require. Annually, and not less than thirty
87 (30) days in advance of the date the Board of Commissioners is to
88 consider the proposed budget of the bar for the next fiscal year,
89 the secretary shall publish in an official publication of the bar
90 a detailed accounting of all projected revenues and each item of
91 expenditure in the proposed budget. Items of expenditure relating
92 to disciplinary functions of the bar shall appear separately from
93 those relating to nondisciplinary functions. In addition, the
94 secretary shall annually cause to be made an independent audit by
95 a certified public accountant of all receipts, expenditures and
96 funds under the control of the bar and shall publish such audit in
97 an official publication of the bar.

98 SECTION 8. Section 73-3-115, Mississippi Code of 1972, is
99 reenacted as follows:

100 73-3-115. The secretary shall maintain his office at the
101 seat of government. But the meetings of the Board of
102 Commissioners shall be at such places as the board may select from
103 time to time or as may be designated in calls made as herein

104 authorized. The meetings of the bar shall be held at such places
105 as the bar may from time to time select. The secretary shall
106 attend all meetings of the board and all meetings of the bar.

107 SECTION 9. Section 73-3-117, Mississippi Code of 1972, is
108 reenacted as follows:

109 73-3-117. The secretary shall receive a salary in such
110 amount and payable in such manner as the Board of Commissioners
111 may prescribe from time to time. No other officer shall be paid a
112 salary. But the traveling expenses of members of the board
113 attending meetings of the board and such expenses of committees
114 making trips on business of the bar shall be paid.

115 SECTION 10. Section 73-3-119, Mississippi Code of 1972, is
116 reenacted as follows:

117 73-3-119. Enrollment on the list of members of the bar and
118 the payment of annual enrollment fees as required hereby shall be
119 prerequisites to the continued practice by any lawyer already
120 admitted and to the engaging in the practice by persons hereafter
121 admitted. The date on which the provisions of this section shall
122 become operative will be determined in the manner hereinafter
123 provided.

124 SECTION 11. Section 73-3-120, Mississippi Code of 1972, is
125 reenacted as follows:

126 73-3-120. Members of the bar shall be divided into active
127 and inactive membership classes which shall be defined as follows:

128 (a) "Active member" means any person admitted to
129 practice law in this state and who is engaged in the practice of
130 law in this state. Except as otherwise provided in Section
131 73-3-125, all active members shall be entitled to vote and hold
132 office in the bar.

133 (b) "Inactive member" means any member, in good
134 standing, who is not engaged in the practice of law in this state.
135 A person may, upon written request, be enrolled as an inactive
136 member. Inactive members shall not be entitled to vote and hold

137 office in the bar.

138 As used in this section, the "practice of law" shall include
139 any person holding himself out as a practicing attorney or
140 occupying any position in which he may be called upon to give
141 legal advice or counsel or to examine the law or to pass upon the
142 legal effect of any act, document or law.

143 The Mississippi Bar shall promulgate rules and regulations
144 regarding continuing legal education requirements between active
145 and inactive status.

146 SECTION 12. Section 73-3-121, Mississippi Code of 1972, is
147 reenacted as follows:

148 73-3-121. Any lawyer changing his residence from one circuit
149 to another shall promptly notify the secretary who shall make the
150 changes on his rolls to show such person's name on the roll of the
151 proper district.

152 SECTION 13. Section 73-3-123, Mississippi Code of 1972, is
153 reenacted as follows:

154 73-3-123. Each member of the bar shall, unless exempt by
155 virtue of Section 73-3-125, pay enrollment fees each year in an
156 amount as established by the Board of Commissioners, but not to
157 exceed the sum of Two Hundred Dollars (\$200.00) until August 1,
158 1997, and not to exceed Two Hundred Twenty-five Dollars (\$225.00)
159 thereafter until August 1, 1999, and not to exceed Two Hundred
160 Fifty Dollars (\$250.00) thereafter for those members admitted to
161 practice law for three (3) years or more; and One Hundred Ten
162 Dollars (\$110.00) for those members admitted to practice law for
163 one (1) year, but less than three (3) years; and Fifty Dollars
164 (\$50.00) for those members admitted to practice law less than one
165 (1) year; and Fifty Dollars (\$50.00) for those members on inactive
166 status. All enrollment fees shall be paid for the same period,
167 that is, for the period of one (1) year beginning on the day and
168 month to be determined as provided in Section 73-3-127. The
169 enrollment fees shall be paid to the secretary of the bar.

170 SECTION 14. Section 73-3-125, Mississippi Code of 1972, is
171 reenacted as follows:

172 73-3-125. All lawyers over the age of seventy-five (75)
173 years, and the judges of the Supreme Court, and circuit, chancery
174 and county judges, United States magistrates, judges of the
175 bankruptcy courts, and the judges of the federal courts are exempt
176 from the payment of enrollment fees. Persons of the classes
177 enumerated in this section shall be active members except that no
178 judge shall be eligible to membership on the Board of
179 Commissioners.

180 SECTION 15. Section 73-3-127, Mississippi Code of 1972, is
181 reenacted as follows:

182 73-3-127. Any member failing to pay any enrollment fees
183 within sixty (60) days after the same become due shall be
184 considered delinquent and shall be given written notice of his
185 delinquency mailed to him by United States mail, addressed to his
186 last known address. If the delinquent fails to pay such
187 enrollment fees within thirty (30) days after written notice of
188 delinquency, he shall stand suspended from membership in the
189 Mississippi Bar. It shall be the duty of the secretary, upon any
190 member's becoming suspended as above stated, to notify the
191 delinquent in writing by United States certified mail of his
192 suspension, and to notify the courts of the county of his last
193 known address of such fact, viz; the circuit court, the chancery
194 court and the county court, if there be a county court, by mailing
195 such notice to the presiding judge and to the clerk of such court.
196 Any member shall be reinstated upon payment of delinquent
197 enrollment fees and a penalty in an amount equal to one-half (1/2)
198 of the delinquent enrollment fees. The secretary, upon such
199 payment, shall forthwith notify the courts above-mentioned of such
200 fact and the clerks thereof shall file and preserve such notice.

201 SECTION 16. Section 73-3-129, Mississippi Code of 1972, is
202 reenacted as follows:

203 73-3-129. The president shall preside at all meetings of the
204 bar, and shall have such duties as the bar may by its bylaws
205 prescribe. In his absence, or in case of his inability to perform
206 his duties they shall devolve upon the first vice president; and
207 in the absence or inability to act of the first vice president the
208 duties of the president shall be performed by the second vice
209 president.

210 SECTION 17. Section 73-3-131, Mississippi Code of 1972, is
211 reenacted as follows:

212 73-3-131. The president shall be a member and the chairman
213 of the Board of Commissioners. In case he is absent from any
214 meeting of the board, the vice president and president-elect shall
215 preside; and in case the vice president and president-elect is
216 absent from any meeting of the board, some other member of the
217 board shall be selected by the members in attendance to preside at
218 that meeting.

219 SECTION 18. Section 73-3-133, Mississippi Code of 1972, is
220 reenacted as follows:

221 73-3-133. The vice president and president-elect and the
222 second vice president shall be members of the Board of
223 Commissioners.

224 SECTION 19. Section 73-3-135, Mississippi Code of 1972, is
225 reenacted as follows:

226 73-3-135. Vacancies in any office, including the office of
227 commissioner, shall be filled by the Board of Commissioners and
228 any person so elected by the Board of Commissioners to fill a
229 vacancy shall hold for the balance of the term of his immediate
230 predecessor in office.

231 SECTION 20. Section 73-3-137, Mississippi Code of 1972, is
232 reenacted as follows:

233 73-3-137. If any member of the board shall be absent from
234 three (3) successive meetings thereof, unless the reason for his
235 absence shall be temporary illness, the board may declare his

236 office vacant and proceed to fill it as provided in the last
237 preceding section.

238 SECTION 21. Section 73-3-139, Mississippi Code of 1972, is
239 reenacted as follows:

240 73-3-139. The membership of the bar shall establish by the
241 adoption of bylaws and amendments thereto at any annual meeting of
242 the bar the time, method and procedures for the election of
243 officers and members of the board. The names of those persons
244 nominated by any method other than by petition of the general
245 membership shall be published in an official publication of the
246 bar at least thirty (30) days in advance of the deadline for
247 nominations by petition of the general membership to be filed, and
248 the bylaws of the bar shall provide in addition to any other
249 method for the nomination of officers and members of the board the
250 manner and procedure by which the general membership of the bar
251 may make nominations by petition. All bylaws of the bar in
252 existence at the time of the adoption of this section shall
253 continue in full force and effect, until such time as such bylaws
254 may be amended by the membership of the bar in accordance with the
255 provisions of the bar bylaws.

256 SECTION 22. Section 73-3-140, Mississippi Code of 1972, is
257 reenacted as follows:

258 73-3-140. The Board of Commissioners, any officer or the
259 Executive Director of the Mississippi Bar shall not be authorized
260 to lease any office space for the use of the Mississippi Bar if
261 such space is being leased for an annual amount in excess of the
262 annual amount paid by the State Supreme Court for its office
263 space. The lease of any office space by the Board of
264 Commissioners, an officer or the Executive Director of the
265 Mississippi Bar for the use of the Mississippi Bar must be
266 approved by the Department of Finance and Administration. The
267 bylaws of the bar shall not be in conflict with the provisions of
268 this section. The provisions of this section shall not apply to

269 any lease existing as of July 1, 1991.

270 SECTION 23. Section 73-3-141, Mississippi Code of 1972, is
271 reenacted as follows:

272 73-3-141. The Mississippi Bar shall be governed by the Board
273 of Commissioners which shall have the powers and duties in this
274 article conferred and which shall be charged with the executive
275 functions of the bar and with the duty to enforce the provisions
276 of this article. But the Board of Commissioners shall observe
277 general rules, not in conflict with the provisions of this
278 article, adopted in the form of bylaws or otherwise by the bar.

279 SECTION 24. Section 73-3-143, Mississippi Code of 1972, is
280 reenacted as follows:

281 73-3-143. (1) The board shall, subject to the approval of
282 the justices of the Supreme Court, formulate reasonable rules
283 governing the conduct of all persons admitted to practice.

284 (2) The Board of Commissioners shall render advisory
285 opinions, upon the written request of any member of the bar, as to
286 the validity or propriety of any proposed act or course of
287 conduct.

288 SECTION 25. Section 73-3-145, Mississippi Code of 1972, is
289 reenacted as follows:

290 73-3-145. (1) It shall be the duty of the Mississippi Bar,
291 by and through its president, to recommend to the State
292 Legislature such legislation relating to the courts, to matters of
293 pleading, practice and procedure, and any other legislation which
294 in its judgment will improve the courts and the law, or render the
295 members of the bar more efficient as ministers of justice and the
296 courts more efficient as instrumentalities for its attainment.

297 (2) The bar shall have the right to make rules and bylaws
298 not in conflict with any of the terms of this article concerning
299 the selection and tenure of its officers and committees and their
300 powers and duties, and generally for the control and regulation of
301 the business of the board and of the bar.

302 (3) The bar shall have the authority to hold and conduct
303 educational and social meetings and activities among the members
304 of the bar, to publish journals and generally to do such things as
305 in their judgment may tend to improve the educational and ethical
306 standing of the bench and bar.

307 SECTION 26. Section 73-3-171, Mississippi Code of 1972, is
308 reenacted as follows:

309 73-3-171. The Board of Commissioners shall have no authority
310 to regulate the fees or charges of lawyers for the rendition of
311 their professional services. Nor shall it in any way undertake to
312 regulate such fees or charges.

313 SECTION 27. Section 73-3-301, Mississippi Code of 1972, is
314 reenacted as follows:

315 73-3-301. Any attorney regularly admitted to practice law in
316 the State of Mississippi or any attorney specially admitted to
317 practice law by a court of this state or any individual admitted
318 to practice as an attorney in any other jurisdiction who regularly
319 engages in the practice of law within this state as house counsel
320 to corporations or other entities, counsel for governmental
321 agencies, out-of-state lawyers admitted or permitted to practice
322 law in this state by comity, bar examination or otherwise are
323 subject to the exclusive and inherent disciplinary jurisdiction of
324 the Supreme Court of Mississippi and the disciplinary agencies
325 hereinafter established and designated; provided, however, nothing
326 herein contained shall be construed to deny to any other court
327 such powers as are necessary for that court to maintain control
328 over practice in and proceedings conducted before it, such as the
329 power of contempt, nor to prohibit local bar associations from
330 censuring, suspending or expelling their members from membership
331 in such local bar association.

332 SECTION 28. Section 73-3-303, Mississippi Code of 1972, is
333 reenacted as follows:

334 73-3-303. The jurisdiction of the court shall be

335 administered in the manner hereinafter set out, and the following
336 entities are hereby established and designated as agencies of the
337 court for such purposes:

338 (a) The Board of Commissioners of the Mississippi Bar,
339 including the Executive Director of the Mississippi Bar and
340 complaint counsel.

341 (b) The committee on complaints of the Mississippi Bar.

342 (c) The complaint tribunals appointed by the Supreme
343 Court of Mississippi.

344 SECTION 29. Section 73-3-305, Mississippi Code of 1972, is
345 reenacted as follows:

346 73-3-305. The composition of the aforesaid disciplinary
347 agencies shall be as follows:

348 (a) Board of Commissioners. The Board of Commissioners
349 of the Mississippi Bar is provided for in Section 73-3-107,
350 Mississippi Code of 1972. The board shall have the authority to
351 employ and compensate a competent person to serve as complaint
352 counsel, who shall be a member of the bar of this state and who
353 shall serve at the pleasure of the board, either in a full-time or
354 part-time capacity. In addition, the board shall have the
355 authority to employ and compensate such assistants to and staff
356 for the complaint counsel and to employ and compensate such other
357 persons as the board may from time to time deem necessary or
358 advisable to effect the disciplinary procedures set forth herein.

359 (b) Committee on complaints. The committee on
360 complaints shall be appointed by the President of the Mississippi
361 Bar in the manner provided in its bylaws, but said committee shall
362 consist of at least one (1) member from each of the Supreme Court
363 districts of the state. The chairman and vice chairman of the
364 committee shall be designated by the President of the Mississippi
365 Bar.

366 (c) Complaint tribunals. Complaint tribunals for each
367 of the Supreme Court districts of the state, consisting of three

368 (3) members who are members of the bar of this state, shall be
369 appointed by the Chief Justice of the Supreme Court to serve on a
370 calendar year basis.

371 SECTION 30. Section 73-3-307, Mississippi Code of 1972, is
372 reenacted as follows:

373 73-3-307. Each of the disciplinary agencies is hereby given
374 such jurisdiction and lawful powers as are necessary to conduct a
375 proper and speedy disposition of any complaint. The power to
376 summons and examine witnesses under oath and to compel their
377 attendance to take or cause to be taken the deposition of
378 witnesses and to order the production of books, papers, records
379 and other documentary evidence necessary or material to the
380 investigation or complaint shall be coequal to the powers
381 exercisable by the courts of record of this state. All summonses
382 or subpoenas shall be issued by the clerk of the court, and it
383 shall be the duty of any person so summoned to appear and testify
384 as in the writ commanded and to produce the books, papers, records
385 or other documentary evidence required. Summonses and subpoenas
386 issued by the clerk of the court shall be delivered to the sheriff
387 of the county where they are to be executed, and the sheriff shall
388 serve such writs and notices, or cause them to be served, as he is
389 required to do with respect to writs received by him from any
390 other court of record.

391 Any defiance of any summons or subpoena so issued, or other
392 extrajudicial conduct which shall inhibit, impede or disrupt any
393 of the above disciplinary agencies in the performance of the
394 duties and in the exercise of the powers herein given shall be
395 treated as contempt of the court and punishable accordingly.

396 SECTION 31. Section 73-3-309, Mississippi Code of 1972, is
397 reenacted as follows:

398 73-3-309. Complaints, irrespective of source, touching upon
399 the professional conduct or conduct evincing unfitness for the
400 practice of law made against attorneys who are members of the bar

401 of this state or who may be temporarily practicing in this state
402 under any rule of comity or courtesy, that may be received by or
403 that may come to the attention of any judicial officer, the Board
404 of Commissioners or any members of the Mississippi Bar, shall be
405 referred to the committee on complaints for preliminary
406 investigation and such disposition or further action as may be
407 appropriate. The complaint must be in writing and signed by the
408 person making the complaint or charge and the complaint must be
409 sworn to or supported by affidavit or the signature of the
410 complaining party witnessed by two (2) persons twenty-one (21)
411 years of age or older. Additionally, the complaint shall contain
412 the street address of the complaining party and each witness.

413 SECTION 32. Section 73-3-310, Mississippi Code of 1972, is
414 reenacted as follows:

415 73-3-310. The chancery and circuit courts shall have the
416 duty to file a complaint under the terms and provisions as
417 outlined in Section 73-3-309 against any attorney who is a
418 resident of the court's district and who demonstrates conduct
419 evincing unfitness for the practice of law.

420 SECTION 33. Section 73-3-311, Mississippi Code of 1972, is
421 reenacted as follows:

422 73-3-311. When any complaint or charge touching upon the
423 professional conduct or conduct evincing unfitness for the
424 practice of law against any attorney subject to discipline
425 hereunder is received by the committee on complaints, the
426 committee shall, within ten (10) days thereof, take the following
427 action:

428 (a) Cause the complaint or charge to be filed and
429 docketed with the Executive Director of the Mississippi Bar;

430 (b) Screen the complaint or charge for merit or the
431 lack thereof, if such determination can be made from the
432 allegations of the complaint and any accompanying documents; and

433 (c) Dismiss any frivolous or ill-grounded complaint or

434 one obviously without merit; or

435 (d) Refer the complaint to complaint counsel for
436 further investigation, hearing and report.

437 SECTION 34. Section 73-3-313, Mississippi Code of 1972, is
438 reenacted as follows:

439 73-3-313. The complaint counsel shall immediately
440 investigate the complaint; and upon completion of his
441 investigation, excluding the investigatory hearing, he shall
442 inform the accused attorney that a complaint has been filed
443 against him and that he is under investigation, advise the accused
444 attorney of the general nature of the charges, furnish him a copy
445 of the complaint and any evidence supporting it, afford the
446 accused attorney a hearing, and advise the attorney of the time
447 and place of such hearing. Communications and notices to the
448 accused attorney shall be transmitted by registered or certified
449 mail, return receipt requested, and marked "Deliver to Addressee
450 Only."

451 SECTION 35. Section 73-3-315, Mississippi Code of 1972, is
452 reenacted as follows:

453 73-3-315. The following rules for investigatory hearings by
454 complaint counsel are for the guidance of complaint counsel and
455 shall be strictly followed:

456 (a) The complainant is not a party to the proceeding
457 and has no right to be present at any stage thereof.

458 (b) The accused attorney has no right to be present at
459 any stage of the investigatory hearing, either in person or by
460 counsel, except complaint counsel shall afford him an opportunity
461 to make a statement, either personally or by counsel, verbally or
462 in writing, refuting or admitting the alleged misconduct and to
463 offer any matter in mitigation or extenuation. The accused
464 attorney may document his statement to include the admission of
465 affidavits but shall not have the right to present other testimony
466 or evidence and shall have no right to confrontation.

467 (c) The investigatory hearing shall neither be public
468 nor assume the character of an adversary proceeding, and a full
469 evidentiary hearing on the merits is not contemplated.

470 (d) Formal rules of evidence will not be applied.

471 (e) Investigation by complaint counsel will not be
472 stayed by settlement, compromise, admission of guilt or
473 restitution.

474 (f) Any attorney called as a witness shall be informed
475 before he gives evidence as to whether he is under investigation
476 and, if so, the nature of the charges against him.

477 (g) Testimony will not be elicited or received which is
478 not germane to the charges being investigated by complaint
479 counsel.

480 SECTION 36. Section 73-3-317, Mississippi Code of 1972, is
481 reenacted as follows:

482 73-3-317. Complaint counsel will cause the testimony of any
483 witnesses at an investigatory hearing to be taken and transcribed
484 and shall certify the same to the committee on complaints, along
485 with his written findings, within thirty (30) days from and after
486 the date on which the complaint was received by him, except that,
487 for good cause shown, upon application to the chairman of said
488 committee, complaint counsel may be granted a total of not more
489 than thirty (30) additional days in which to make said
490 certification. A copy of complaint counsel's report shall be sent
491 to the accused attorney by certified mail, and the accused
492 attorney shall have ten (10) days after the receipt by him of
493 complaint counsel's report to file a written response thereto with
494 the committee on complaints. Upon application to the chairman of
495 the said committee, the accused attorney may be granted such
496 additional time as circumstances warrant.

497 SECTION 37. Section 73-3-319, Mississippi Code of 1972, is
498 reenacted as follows:

499 73-3-319. Within thirty (30) days of its receipt of

500 complaint counsel's report, the committee on complaints shall take
501 the following action:

502 (a) If upon review of the record, complaint counsel's
503 report and any written response by the accused attorney, the
504 committee determines that there is not reasonable ground to
505 believe that the accused attorney has been guilty of
506 unprofessional conduct or conduct evincing unfitness for the
507 practice of law, the committee may either re-refer the matter to
508 complaint counsel for further investigation or may dismiss the
509 complaint and retire the file. In the latter event, the person
510 filing the complaint, the accused attorney and the Executive
511 Director of the Mississippi Bar shall be given written notice of
512 the committee's determination.

513 (b) If upon review of the record, complaint counsel's
514 report and any written response by the accused attorney, the
515 committee determines that there is reasonable ground to believe
516 that the accused attorney has been guilty of unprofessional
517 conduct or conduct evincing unfitness for the practice of law, and
518 is of the further opinion that a reprimand of the accused attorney
519 is all that justice requires and will adequately afford the
520 disciplinary sanctions required by the particular circumstances,
521 the committee may administer a private reprimand, or it may, in
522 its discretion, make public the fact of the reprimand by having
523 the same delivered in open court by the chancery or circuit court
524 of the county of the accused attorney. However, such action shall
525 not be taken except upon proper notice and hearing, such notice
526 and hearing to be upon the same formal requirements and assuring
527 to the accused attorney the same rights and privileges as provided
528 in Section 73-3-321 et seq. for hearings upon complaints which, if
529 proven, would warrant suspension or disbarment. Further, any
530 decision of the complaint tribunal to issue a reprimand shall be
531 appealable in the same manner and to the same extent as provided
532 in Section 73-3-329. The committee, in its discretion, may

533 require the accused attorney to appear before it for delivery of
534 the reprimand or may forward it to him by registered mail. In any
535 event, written notice of the delivery of such reprimand shall be
536 given to the person filing the complaint, the clerk of the court,
537 the Executive Director of the Mississippi Bar, and to the judges
538 of the circuit and chancery court districts of the accused
539 attorney.

540 (c) If the committee determines there is reasonable
541 cause to believe the accused attorney is guilty of such conduct,
542 which, if proven, would warrant suspension for a definite or an
543 indefinite period or permanent disbarment, the committee shall
544 direct complaint counsel in writing to prepare and file a formal
545 complaint against the accused attorney. Complaint counsel shall
546 prosecute the case to conclusion, unless the President of the
547 Mississippi Bar, in his sole discretion, shall appoint one or more
548 active members of the Mississippi Bar to either assist complaint
549 counsel or to serve independently as trial attorney or attorneys
550 in the prosecution of the proceeding to conclusion.

551 SECTION 38. Section 73-3-321, Mississippi Code of 1972, is
552 reenacted as follows:

553 73-3-321. (1) All formal complaints shall be filed in the
554 court and shall be prosecuted in the name of the Mississippi Bar.
555 The formal complaint and other pleadings shall comply with the
556 following requirements:

557 (a) The formal complaint shall be filed with the clerk
558 of the court within thirty (30) days of the receipt by complaint
559 counsel of the written notice from the committee on complaints
560 directing him to file said complaint.

561 (b) The complaint shall set forth with fair and
562 reasonable certainty the particulars of the offense of which the
563 accused attorney is charged.

564 (c) All matters of defense or abatement asserted by the
565 accused attorney shall be filed within twenty (20) days after a

566 copy of the complaint is served upon the accused attorney.
567 Provided that upon application to the clerk the accused attorney
568 may be granted such additional time as the circumstances warrant.

569 (d) The complaint shall be personally served upon the
570 accused attorney by the Executive Director of the Mississippi Bar
571 or by the complaint counsel unless the accused attorney shall
572 waive the same by execution and delivery to the clerk of receipt
573 and waiver of personal service.

574 (2) The procedure for suspending an attorney from the
575 practice of law for being out of compliance with an order for
576 support, as defined in Section 93-11-153, and the procedure for
577 reinstating an attorney to practice law after suspension for being
578 out of compliance, and the payment of any fees for reinstating an
579 attorney to practice law after suspension for being out of
580 compliance, shall be governed by Section 93-11-157 or 93-11-163,
581 as the case may be. If there is any conflict between any
582 provision of Section 93-11-157 or 93-11-163 and any provision of
583 this article, the provisions of Section 93-11-157 or 93-11-163, as
584 the case be, shall control.

585 SECTION 39. Section 73-3-323, Mississippi Code of 1972, is
586 reenacted as follows:

587 73-3-323. Within five (5) days after the formal complaint is
588 filed with the clerk of the court by complaint counsel, the chief
589 justice shall designate a complaint tribunal to conduct a hearing
590 on the formal complaint and to determine the matter; provided,
591 however, the complaint tribunal so designated by the chief justice
592 shall not be composed of members from the same supreme court
593 district as that within which the accused attorney resides. The
594 chief justice shall designate one (1) member of the complaint
595 tribunal to be the presiding judge thereof. Any member of the
596 complaint tribunal who is not an elected judge or chancellor shall
597 be entitled to a per diem as authorized by Section 25-3-69 for
598 each day's service in attending hearings or necessary business of

599 the tribunal and shall receive reimbursement for necessary
600 expenses and mileage as is authorized by Section 25-3-41. Said
601 per diem and expense reimbursement, subject to funds being
602 appropriated therefor, shall be paid from any available funds
603 appropriated to the Supreme Court.

604 SECTION 40. Section 73-3-325, Mississippi Code of 1972, is
605 reenacted as follows:

606 73-3-325. Within forty-five (45) days after the designation
607 by the Chief Justice of the complaint tribunal to hear and
608 determine the formal complaint, the complaint tribunal shall
609 conduct a hearing of the matter at such place and within such
610 hours as determined by the tribunal; provided, however, such
611 hearing shall be held and conducted within the county in which the
612 accused attorney resides and provided further that for good cause
613 shown the complaint tribunal may grant a reasonable continuance or
614 continuances of said hearing. Written notice of the date, time
615 and place of said hearing shall be mailed by the clerk of the
616 court at the direction of the presiding judge of the complaint
617 tribunal to the accused attorney by registered mail, return
618 receipt requested, no less than ten (10) days prior to the
619 commencement of said hearing.

620 All hearings by a complaint tribunal shall be a full
621 evidentiary hearing, conducted on an adversary basis. The rules
622 of evidence and procedure applicable to and followed by the
623 chancery courts of Mississippi shall apply to such hearings. A
624 duly qualified court reporter shall be in attendance and shall
625 make a full and complete transcript of the proceedings. The
626 hearing by the complaint tribunal shall be closed, unless the
627 accused attorney shall request a public hearing; and the complaint
628 tribunal shall have the right and duty to impose such reasonable
629 restrictions as it may deem necessary or appropriate to insure an
630 orderly, expeditious and impartial proceeding.

631 SECTION 41. Section 73-3-327, Mississippi Code of 1972, is

632 reenacted as follows:

633 73-3-327. (1) At the conclusion of the hearing the
634 complaint tribunal, upon the majority vote of the members of such
635 tribunal, shall render a written opinion incorporating a finding
636 of fact and a judgment thereon. The judgment of the complaint
637 tribunal may provide the following:

638 (a) Exonerate the accused attorney and dismiss the
639 complaint.

640 (b) Reprimand and admonish the attorney, as provided in
641 Section 73-3-319(b) of this article.

642 (c) Suspend the attorney from the practice of law for
643 any period of time.

644 (d) Permanently disbar the attorney.

645 (2) In cases in which the Clerk of the Supreme Court has
646 received notice from the division that the attorney is out of
647 compliance with an order for support, as defined in Section
648 93-11-153, the Supreme Court shall suspend the attorney from the
649 practice of law until such time as the attorney may be reinstated
650 to practice law because of the attorney's compliance with the
651 requirements of Section 93-11-157 or 93-11-163, as the case may
652 be.

653 SECTION 42. Section 73-3-329, Mississippi Code of 1972, is
654 reenacted as follows:

655 73-3-329. (1) The entire record of the proceeding of the
656 complaint tribunal shall be filed with the clerk of the court
657 within thirty (30) days after the conclusion of the hearing or
658 within such additional time as the clerk, on motion therefor, may
659 allow.

660 (2) If no appeal from the judgment of the complaint tribunal
661 is perfected within thirty (30) days from the date of said
662 judgment, the judgment of the complaint tribunal shall be final.

663 (3) Either the attorney or the Mississippi Bar shall have
664 the right to an appeal to the court, which appeal shall be

665 perfected within thirty (30) days of the date of the judgment of
666 the complaint tribunal by the aggrieved party filing a notice of
667 appeal with the clerk of the court.

668 (4) The record on appeal shall consist of the formal
669 complaint, all other pleadings, the transcript of the testimony
670 and the written opinion and judgment of the complaint tribunal.

671 (5) On appeal, the court may review all of the evidence and
672 the law and the findings and conclusions of the complaint tribunal
673 and it may make such findings and conclusions and render such
674 order as it may find to be appropriate based upon the whole
675 record.

676 (6) The rules of practice and procedure for the filing of
677 briefs and oral arguments governing appeals from the chancery or
678 circuit courts of Mississippi shall apply to and govern appeals
679 from the judgment of the complaint tribunals; provided, however,
680 whenever possible, the court shall advance and expedite the cause
681 on its docket.

682 (7) Actions taken by the Supreme Court in suspending an
683 attorney from the practice of law when required by Section
684 93-11-157 or 93-11-163 are not actions from which an appeal may be
685 taken under this section. Any appeal of the suspension of an
686 attorney from the practice of law that is required by Section
687 93-11-157 or 93-11-163 shall be taken in accordance with the
688 appeal procedure specified in Section 93-11-157 or 93-11-163, as
689 the case may be, rather than the procedure specified in this
690 section.

691 SECTION 43. Section 73-3-331, Mississippi Code of 1972, is
692 reenacted as follows:

693 73-3-331. Upon a final judgment of suspension or disbarment
694 by a complaint tribunal, the convicted attorney shall not be
695 privileged to practice law within this state unless and until he
696 is restored the privilege of practice as hereinafter provided.
697 Appeal from a judgment by the complaint tribunal shall operate as

698 a supersedeas. An appeal from a judgment of the Supreme Court
699 suspending an attorney from the practice of law when required by
700 Section 93-11-157 or 93-11-163 may operate as a supersedeas only
701 as may be allowed under Section 93-11-157 or 93-11-163, as the
702 case may be.

703 SECTION 44. Section 73-3-333, Mississippi Code of 1972, is
704 reenacted as follows:

705 73-3-333. At any stage of the disciplinary proceedings an
706 accused attorney who is the subject of investigation may submit
707 his resignation and agree to the entry by the court of a consent
708 order of suspension or dismissal by submitting to the Board of
709 Commissioners an affidavit stating that he desires to resign from
710 the bar and to surrender his privilege to practice law, and that:

711 (a) His resignation is freely and voluntarily rendered;
712 he is not being subjected to coercion or duress; and he is fully
713 aware of the implications of submitting his resignation.

714 (b) He is aware that there is pending an investigation
715 into allegations that he has been guilty of unprofessional
716 conduct, the nature of which he shall specifically set forth.

717 (c) He acknowledges that the material facts upon which
718 the complaint is based are true.

719 (d) He submits his resignation because he knows that if
720 charges were predicated on the misconduct under investigation, he
721 could not defend himself successfully against them.

722 Notwithstanding the provisions of Section 73-3-315(e) to the
723 contrary, upon receipt of said affidavit, the investigation or
724 disciplinary procedure shall terminate, and the Board of
725 Commissioners will present to the court an agreed order to be
726 entered by the court either suspending or disbaring said attorney
727 by consent, as the particular circumstances of the matter may
728 require in the discretion of the Board of Commissioners. Said
729 order shall be a public record, and certified copies thereof shall
730 be mailed to the judges of the circuit and chancery court

731 districts within which the attorney resides.

732 Once a complaint has been filed against an attorney, this
733 shall be the exclusive method for resignation pending the
734 investigation and determination of said complaint, and no other
735 resignation procedure will be permitted or recognized by the bar.

736 SECTION 45. Section 73-3-335, Mississippi Code of 1972, is
737 reenacted as follows:

738 73-3-335. Any time after the entry of a final judgment of
739 suspension and after the expiration of at least one-fourth (1/4)
740 of the period of the ordered suspension, the convicted attorney
741 may file a petition in the court to modify or terminate said
742 suspension; provided, however, any petition to modify or terminate
743 subsequent to the initial petition shall not be filed within six
744 (6) months from the date of the adverse determination of any prior
745 petition. A filing fee of Two Hundred Fifty Dollars (\$250.00) to
746 defray the expense of investigating the matter shall be paid the
747 Mississippi Bar upon the filing of each petition to modify or
748 terminate. A copy of said petition shall be served upon the
749 Mississippi Bar, and it shall be under a duty to investigate the
750 matter, respond to the petition and appear at the hearing.
751 Modification or termination of suspension shall be granted only
752 upon a showing of good cause and exceptional circumstances.

753 The procedure for reinstating an attorney to practice law
754 after suspension for being out of compliance with an order of
755 support, as defined in Section 93-11-153, and the payment of any
756 fees for reinstating an attorney to practice law after suspension
757 for being out of compliance, shall be governed by Section
758 93-11-157 or 93-11-163, as the case may be.

759 SECTION 46. Section 73-3-337, Mississippi Code of 1972, is
760 reenacted as follows:

761 73-3-337. Upon the termination of the period of suspension,
762 the convicted attorney may be reinstated by the court, pursuant to
763 a petition filed with the court and a copy thereof served upon the

764 Mississippi Bar. A filing fee of Two Hundred Fifty Dollars
765 (\$250.00) to defray the expense of investigating the matter shall
766 be paid the Mississippi Bar upon the filing of such petition. The
767 Mississippi Bar shall investigate the matter and report all
768 relevant facts for the consideration of the court.

769 Any time after the expiration of three (3) years from and
770 after the date of the final judgment of disbarment, the convicted
771 attorney may petition the court for reinstatement. The petition
772 shall be in writing and verified by the petitioner, and it shall
773 set forth the full name, age, residence and mailing address of the
774 petitioner, the offense or misconduct for which he was disbarred,
775 a concise statement of the facts claimed to justify restoration
776 and that he has made full amends and restitution to all persons,
777 firms or legal entities, naming them, who may have suffered
778 pecuniary loss by reason of the misconduct or offense for which he
779 was disbarred. A copy of said petition shall be served on the
780 Mississippi Bar, and a filing fee of Five Hundred Dollars
781 (\$500.00) to defray the expense of investigating the matter shall
782 be paid the Mississippi Bar upon the filing of each petition. Any
783 petition for reinstatement subsequent to the initial petition
784 shall not be filed by the convicted attorney within one (1) year
785 from the date of the adverse determination of any prior petition.

786 The court shall examine the petition and, if satisfied that
787 it states sufficient grounds, shall set the same for hearing and
788 shall cause the clerk of the court to serve each person named in
789 the petition with a copy thereof by sending the same to them by
790 registered mail. If the court deems it necessary or proper to so
791 do, it may cause an investigation to be made by complaint counsel.

792 If the court is satisfied that all material allegations of
793 the petition for reinstatement are true and that the ends of
794 justice will be served, the court may reinstate the convicted
795 attorney and enter judgment accordingly; provided, however, no
796 judgment of reinstatement shall be entered by default or on an ex

797 parte basis, and in all cases the court shall hear the Mississippi
798 Bar and may hear any party named in the petition.

799 The procedure for reinstating an attorney to practice law
800 after suspension for being out of compliance with an order of
801 support, as defined in Section 93-11-153, and the payment of any
802 fees for reinstating an attorney to practice law after suspension
803 for being out of compliance, shall be governed by Section
804 93-11-157 or 93-11-163, as the case may be.

805 SECTION 47. Section 73-3-339, Mississippi Code of 1972, is
806 reenacted as follows:

807 73-3-339. Whenever any attorney subject to the disciplinary
808 jurisdiction of the court shall be convicted in any state court or
809 in any federal court, or enter a plea of guilty or a plea of nolo
810 contendere therein, of any felony other than manslaughter or any
811 violation of the United States Internal Revenue Code, or of any
812 offense involving fraud, dishonesty, misrepresentation, deceit,
813 failure to account for money or property of a client, or of any
814 offense involving moral turpitude, a certified copy of the
815 judgment of conviction shall be presented to the court by the
816 Board of Commissioners. Upon the presentation of such certified
817 copy of judgment, the court shall forthwith strike the name of the
818 attorney so convicted or who entered such a plea from the rolls of
819 the Mississippi Bar and order his immediate suspension from
820 practice, pending an appeal and final disposition of disciplinary
821 proceedings. Such attorney will be reinstated immediately upon
822 the reversal of his conviction for the offense that has resulted
823 in his automatic suspension, but such reinstatement shall not
824 terminate any disciplinary proceeding then pending against the
825 attorney.

826 A certified copy of the final judgment of conviction of an
827 attorney for any offense hereinabove specified shall be conclusive
828 evidence of his guilt of that offense in any disciplinary
829 proceeding instituted against him and based on said conviction.

830 Upon the conviction of an attorney, or the entry by him of a
831 plea of nolo contendere, for the above offenses, excluding
832 manslaughter or any violation of the United States Internal
833 Revenue Code, the Board of Commissioners shall immediately direct
834 complaint counsel to institute a disciplinary proceeding in which
835 the sole issue to be determined will be the extent of the final
836 discipline to be imposed; provided, however, a disciplinary
837 proceeding so instituted shall not be brought to hearing until all
838 appeals from such conviction have been concluded.

839 The judge of any court within this state in which an attorney
840 has been convicted for any of the above enumerated offenses shall
841 cause to be transmitted to the court and to the Board of
842 Commissioners a certified copy of the judgment of conviction.

843 SECTION 48. Section 73-3-341, Mississippi Code of 1972, is
844 reenacted as follows:

845 73-3-341. Whenever any attorney subject to the disciplinary
846 jurisdiction of the court shall be disbarred or suspended from the
847 practice of law in another jurisdiction, such disbarment or
848 suspension shall be grounds for disciplinary action in this state,
849 and certification of such disbarment or suspension by the
850 appropriate authority of such jurisdiction to the Executive
851 Director of the Mississippi Bar shall be conclusive evidence of
852 his guilt of the offense or unprofessional conduct on which said
853 disbarment or suspension was ordered, and it shall not be
854 necessary to prove the grounds of such offense in the disciplinary
855 proceeding in this state. The sole issue to be determined in the
856 disciplinary proceeding in this state shall be the extent of the
857 final discipline to be imposed on said attorney, which may be less
858 or more severe than the discipline imposed by the other
859 jurisdiction.

860 SECTION 49. Section 73-3-343, Mississippi Code of 1972, is
861 reenacted as follows:

862 73-3-343. All disciplinary agencies of the court, all court

863 reporters, clerks, witnesses and parties are strictly enjoined to
864 keep and maintain confidential all things concerning the matters
865 under investigation and the proceedings thereon; provided,
866 however, all proceedings before any complaint tribunal and in the
867 court may be public if requested by the accused attorney. The
868 complaint tribunal may, however, file with the Supreme Court an
869 opinion or summary of the findings of fact and conclusions of law
870 without disclosing the identity or residence of the accused, the
871 complaining party or parties, witnesses, or any person, firm or
872 corporation involved. Violation of this section or any part
873 hereof shall be a misdemeanor punishable by a fine of not more
874 than Five Hundred Dollars (\$500.00) or by imprisonment in the
875 county jail for not more than thirty (30) days or by both.

876 SECTION 50. Section 73-3-345, Mississippi Code of 1972, is
877 reenacted as follows:

878 73-3-345. All complaints filed pursuant hereto shall be
879 absolutely privileged, and no lawsuit predicated thereon may be
880 instituted, and each person, firm, association or legal entity
881 filing such a complaint shall be immune from any civil suit
882 predicated thereon. The Board of Commissioners, the committee on
883 complaints, the executive director, the complaint counsel, the
884 complaint tribunals, and their assistants, staff and employees
885 shall be immune from civil suit for any conduct arising out of the
886 performance of their official duties. Every person shall be
887 immune from civil suit for all of his sworn or written statements
888 made or given in the course of any investigation, investigatory
889 hearing, formal hearing or review proceedings held and conducted
890 under these disciplinary rules.

891 SECTION 51. Section 73-3-347, Mississippi Code of 1972, is
892 reenacted as follows:

893 73-3-347. For the purposes of Sections 73-3-347 through
894 73-3-365, the term "personally incapable" to practice law shall
895 include: (a) suffering from mental or physical illness of such

896 character as to render the person afflicted incapable of managing
897 himself, his affairs or the affairs of others with the integrity
898 and competence requisite for the proper practice of law; or (b)
899 habitual use of alcoholic beverages or liquids of any alcoholic
900 content, hallucinogens, sedatives, drugs, narcotics or other
901 mentally or physically disabling substances of any character
902 whatsoever to any extent which impairs or tends to impair the
903 ability to conduct efficiently and properly the affairs undertaken
904 for a client in the practice of law.

905 SECTION 52. Section 73-3-349, Mississippi Code of 1972, is
906 reenacted as follows:

907 73-3-349. Whenever it has been determined that any attorney
908 subject to the disciplinary jurisdiction of the court is
909 personally incapable to practice law, he shall be suspended from
910 the practice of law until reinstated by order of the court.

911 SECTION 53. Section 73-3-351, Mississippi Code of 1972, is
912 reenacted as follows:

913 73-3-351. Proceedings to determine whether an attorney is
914 personally incapable to practice law shall be instituted and
915 conducted in the same manner and upon the same procedure as
916 disciplinary proceedings, except as otherwise set out in Sections
917 73-3-347 through 73-3-365. In addition to, and without exclusion
918 of, any other circumstances, cause to believe that an attorney may
919 be personally incapable to practice law shall exist whenever
920 information is received that such member (a) has interposed
921 successfully a defense of mental incompetence to secure abatement
922 of, or to defeat an adverse determination in, a disciplinary
923 proceeding brought against him in any tribunal in any
924 jurisdiction, (b) has defended, upon like grounds, a suit brought
925 against him in any tribunal in any jurisdiction, (c) has been
926 judicially declared incompetent, or (d) has been legally committed
927 to an institution for the treatment of mental illness.

928 SECTION 54. Section 73-3-353, Mississippi Code of 1972, is

929 reenacted as follows:

930 73-3-353. In proceedings under Sections 73-3-347 through
931 73-3-365, the attorney shall be entitled to representation by
932 counsel. An attorney who has been declared mentally incompetent,
933 judicially, or who has been committed, judicially, to an
934 institution for the treatment of the mentally ill shall be
935 defended by his legally appointed guardian or guardian ad litem,
936 if any; if a guardian or guardian ad litem has not been appointed,
937 the Chief Justice, on certification by the Board of Commissioners,
938 shall appoint a guardian ad litem. The same procedure shall apply
939 to an attorney who has asserted his incompetence, or whose
940 incompetence to defend becomes apparent during the proceedings. In
941 all cases, counsel previously selected by the attorney will be
942 appointed guardian ad litem, absent clear and compelling reasons
943 to the contrary.

944 SECTION 55. Section 73-3-355, Mississippi Code of 1972, is
945 reenacted as follows:

946 73-3-355. Service of process or notice to an attorney who
947 has been committed or declared incompetent shall be accomplished
948 in the same manner as that for process of incompetents in
949 proceedings in the chancery courts of Mississippi. After the
950 appointment of a guardian ad litem, notices shall be served upon
951 said guardian ad litem.

952 SECTION 56. Section 73-3-357, Mississippi Code of 1972, is
953 reenacted as follows:

954 73-3-357. A certified copy of the court order declaring an
955 attorney mentally incompetent, or an order of commitment if he has
956 been committed to an institution for the mentally incompetent,
957 shall constitute sufficient evidence that said attorney is
958 personally incapable to practice law, if such is not successfully
959 rebutted.

960 SECTION 57. Section 73-3-359, Mississippi Code of 1972, is
961 reenacted as follows:

962 73-3-359. In any proceeding where mental incompetency is an
963 issue, the attorney may be required to submit to a mental
964 examination by one or more practicing psychiatrists selected by
965 the Board of Commissioners or by the complaint tribunal after its
966 designation. Reports of physicians regarding the mental condition
967 of an attorney may be received as probative evidence, if the
968 physicians are available for cross-examination.

969 SECTION 58. Section 73-3-361, Mississippi Code of 1972, is
970 reenacted as follows:

971 73-3-361. If, after a full hearing, the complaint tribunal
972 finds the attorney personally incapable to practice law, the
973 complaint tribunal shall enter a judgment formally suspending said
974 attorney from the practice of law until the further order of the
975 court.

976 SECTION 59. Section 73-3-363, Mississippi Code of 1972, is
977 reenacted as follows:

978 73-3-363. Procedures for the filing of the record and appeal
979 from the judgment of the complaint tribunal shall be the same as
980 the appeal procedures from a judgment of suspension or disbarment
981 upon disciplinary grounds.

982 SECTION 60. Section 73-3-365, Mississippi Code of 1972, is
983 reenacted as follows:

984 73-3-365. Procedures for reinstatement of an attorney
985 suspended because of personal incapacity to practice law shall be,
986 insofar as is applicable, the same as the procedure for
987 reinstatement of an attorney following suspension upon
988 disciplinary grounds. The petition for reinstatement shall be
989 filed with the clerk of the court, and a copy of said petition
990 shall be served upon the Mississippi Bar, and it shall be under a
991 duty to investigate the matter, respond to the petition and appear
992 at the hearing. The petitioner shall be required to supply such
993 supporting proof of personal capacity as may be necessary and, in
994 addition, the attorney may be required to submit to examinations

995 by physicians or psychiatrists selected by the court. If the
996 court is satisfied that the attorney has regained his capacity to
997 practice law, the court may reinstate the petitioner to the
998 practice of law and enter judgment accordingly; provided, however,
999 no judgment of reinstatement shall be entered by default or on an
1000 ex parte basis, and in all cases the court shall hear the
1001 Mississippi Bar. A filing fee of One Hundred Fifty Dollars
1002 (\$150.00) to defray the expense of investigating the matter shall
1003 be paid the Mississippi Bar upon the filing of each petition for
1004 reinstatement, and any petition for reinstatement subsequent to
1005 the initial petition shall not be filed within six (6) months from
1006 the date of an adverse determination of any prior petition.

1007 SECTION 61. Section 73-3-367, Mississippi Code of 1972, is
1008 reenacted as follows:

1009 73-3-367. All disciplinary agencies of the court are hereby
1010 authorized to incur reasonable and necessary expenses in
1011 connection with the investigation and disposition of charges and
1012 complaints.

1013 SECTION 62. Section 73-3-369, Mississippi Code of 1972, is
1014 reenacted as follows:

1015 73-3-369. The acceptance by a nonresident attorney of the
1016 rights and privileges of the practice of law within this state, as
1017 evidenced by his practice of law in this state, shall be deemed
1018 equivalent to an appointment by such nonresident attorney of the
1019 Executive Director of the Mississippi Bar to be his true and
1020 lawful attorney, upon whom may be served all process summons or
1021 notice of any and all proceedings against him instituted pursuant
1022 to and conducted under these rules of disciplinary procedure; and
1023 the acceptance of such rights and privileges and the practice of
1024 law by any such nonresident attorney in this state shall be a
1025 signification of his agreement that any such process, summons or
1026 notice against him which is so served shall be of the same legal
1027 force and validity as if served on him personally.

1028 Notice of the service of such process, summons or notice,
1029 together with a copy of any complaint or charge, shall be mailed
1030 forthwith by the executive director by United States certified
1031 mail or registered mail, return receipt requested, restricted for
1032 delivery to addressee only, and with postage prepaid, to such
1033 nonresident attorney at his last known address.

1034 When such process, summons or notice is served as herein
1035 provided it shall be deemed sufficient to give the court, and its
1036 disciplinary agencies provided for herein jurisdiction over said
1037 nonresident attorney for the purpose of investigating and finally
1038 determining any complaint or charge touching upon the professional
1039 conduct or conduct evincing unfitness for the practice of law or
1040 the personal incapacity to practice law of any such nonresident
1041 attorney.

1042 SECTION 63. Section 73-3-371, Mississippi Code of 1972, is
1043 reenacted as follows:

1044 73-3-371. At any stage of the disciplinary proceedings, the
1045 Board of Commissioners may, in the exercise of its sole
1046 discretion, accept a plea of nolo contendere from the accused
1047 attorney and agree to the entry by the court of a consent order of
1048 suspension or disbarment of the accused attorney.

1049 Notwithstanding the provisions of Section 73-3-315(e) to the
1050 contrary, upon the acceptance of a plea of nolo contendere the
1051 investigation or disciplinary procedure shall terminate, and the
1052 Board of Commissioners will present to the court an agreed order
1053 to be entered by the court either suspending or disbarring said
1054 attorney by consent, as the particular circumstances of the matter
1055 may require in the discretion of the Board of Commissioners. Said
1056 order shall be a public record, and certified copies thereof shall
1057 be mailed to the judges of the circuit and chancery court
1058 districts within which the attorney resides.

1059 For the purpose of determining the discipline to be imposed
1060 on the accused attorney, the Board of Commissioners shall consider

1061 a plea of nolo contendere as tantamount to proof of guilt of the
1062 offense or unprofessional conduct or personal disability to
1063 practice law on which said disciplinary proceeding was grounded.

1064 SECTION 64. Section 73-3-373, Mississippi Code of 1972, is
1065 reenacted as follows:

1066 73-3-373. This article shall not be construed to modify or
1067 restrict the inherent right of the courts of record of the State
1068 of Mississippi to supervise the bar as an incident to their power
1069 to admit attorneys to practice and to the fulfillment of their
1070 responsibility for the proper administration of justice, it being
1071 here declared that it is an inherent power of the judicial branch
1072 of government ultimately to determine the qualifications of those
1073 to be admitted to practice in its court, for assisting in its
1074 work, and to protect itself and the citizenry of this state in
1075 this respect from the unfit, those lacking in sufficient learning
1076 and those not possessing good moral character. Any disciplinary
1077 proceeding in which the Mississippi Bar is a complaining party
1078 shall be conducted in accordance with the remaining sections of
1079 this article.

1080 SECTION 65. Section 73-3-403, Mississippi Code of 1972, is
1081 amended as follows:

1082 73-3-403. Sections 73-3-101 through 73-3-145, 73-3-171 and
1083 73-3-301 through 73-3-373, Mississippi Code of 1972, which create
1084 the State Board of Bar Commissioners and prescribe its duties and
1085 powers, shall stand repealed as of December 31, 2003.

1086 SECTION 66. This act shall take effect and be in force from
1087 and after July 1, 2000.