

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 885

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, 73-3-171, 73-3-301,  
 6 73-3-303, 73-3-305, 73-3-307, 73-3-309, 73-3-310, 73-3-311,  
 7 73-3-313, 73-3-315, 73-3-317, 73-3-319, 73-3-321, 73-3-323,  
 8 73-3-325, 73-3-327, 73-3-329, 73-3-331, 73-3-333, 73-3-335,  
 9 73-3-337, 73-3-339, 73-3-341, 73-3-343, 73-3-345, 73-3-347,  
 10 73-3-349, 73-3-351, 73-3-353, 73-3-355, 73-3-357, 73-3-359,  
 11 73-3-361, 73-3-363, 73-3-365, 73-3-367, 73-3-369, 73-3-371 AND  
 12 73-3-373, MISSISSIPPI CODE OF 1972, WHICH CREATE MISSISSIPPI BAR  
 13 AND THE STATE BOARD OF BAR COMMISSIONERS AND PRESCRIBE ITS DUTIES  
 14 AND POWERS; TO AMEND SECTION 73-3-403, MISSISSIPPI CODE OF 1972,  
 15 TO EXTEND THE REPEALER ON THE MISSISSIPPI BAR AND THE STATE BOARD  
 16 OF BAR COMMISSIONERS; AND FOR RELATED PURPOSES.

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

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

20 73-3-101. The resident lawyers now authorized to practice  
 21 law in the State of Mississippi are hereby and herewith  
 22 constituted an association which shall be known as the Mississippi  
 23 Bar.

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

26 73-3-103. All resident persons now or hereafter admitted to  
 27 practice law in the state shall be members of this association.

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

30 73-3-105. The bar shall elect a president, a first vice  
 31 president and president-elect, and a second vice president, who  
 32 shall each serve for a term of one (1) year. None of such  
 33 officers shall be eligible to succeed himself.



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

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

50           73-3-107. The bar shall be controlled and governed by a  
51 board of commissioners consisting of as many members as shall be  
52 established by the bylaws of the bar or any amendments thereto,  
53 adopted at an annual meeting of the bar.

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

56           73-3-109. At all meetings of the board of commissioners a  
57 majority of the entire membership shall constitute a quorum for  
58 action upon any questions that may come before the board except  
59 such questions as this article or the bylaws of the organization  
60 may require to be passed upon by a larger portion of the  
61 membership.

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

64           73-3-111. A secretary, who may be designated as executive  
65 director, shall be elected by the board of commissioners and shall  
66 hold office for one (1) year.



67           The secretary shall keep and maintain rolls which shall  
68 contain the name and place of residence of every lawyer in the  
69 state. He may adopt such means as he thinks best to make the  
70 rolls accurate and complete. There shall be made a separate roll  
71 for each circuit court district.

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

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

81           73-3-113. The secretary shall also perform the duties of  
82 treasurer. He shall make bond for the safe handling of all funds  
83 for which he may become responsible, the bond to be in such  
84 penalty, with such sureties, and conditioned as the board of  
85 commissioners may require. Annually, and not less than thirty  
86 (30) days in advance of the date the board of commissioners is to  
87 consider the proposed budget of the bar for the next fiscal year,  
88 the secretary shall publish in an official publication of the bar  
89 a detailed accounting of all projected revenues and each item of  
90 expenditure in the proposed budget. Items of expenditure relating  
91 to disciplinary functions of the bar shall appear separately from  
92 those relating to nondisciplinary functions. In addition, the  
93 secretary shall annually cause to be made an independent audit by  
94 a certified public accountant of all receipts, expenditures and  
95 funds under the control of the bar and shall publish such audit in  
96 an official publication of the bar.

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



99           73-3-115. The secretary shall maintain his office at the  
100 seat of government. But the meetings of the board of  
101 commissioners shall be at such places as the board may select from  
102 time to time or as may be designated in calls made as herein  
103 authorized. The meetings of the bar shall be held at such places  
104 as the bar may from time to time select. The secretary shall  
105 attend all meetings of the board and all meetings of the bar.

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

108           73-3-117. The secretary shall receive a salary in such  
109 amount and payable in such manner as the board of commissioners  
110 may prescribe from time to time. No other officer shall be paid a  
111 salary. But the traveling expenses of members of the board  
112 attending meetings of the board and such expenses of committees  
113 making trips on business of the bar shall be paid.

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

116           73-3-119. Enrollment on the list of members of the bar and  
117 the payment of annual enrollment fees as required hereby shall be  
118 prerequisites to the continued practice by any lawyer already  
119 admitted and to the engaging in the practice by persons hereafter  
120 admitted. The date on which the provisions of this section shall  
121 become operative will be determined in the manner hereinafter  
122 provided.

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

125           73-3-120. Members of the bar shall be divided into active  
126 and inactive membership classes which shall be defined as follows:

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



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

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

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

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

147           73-3-121. Any lawyer changing his residence from one circuit  
148 to another shall promptly notify the secretary who shall make the  
149 changes on his rolls to show such person's name on the roll of the  
150 proper district.

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

153           73-3-123. Each member of the bar shall, unless exempt by  
154 virtue of Section 73-3-125, pay enrollment fees each year in an  
155 amount as established by the board of commissioners, but not to  
156 exceed the sum of Two Hundred Dollars (\$200.00) until August 1,  
157 1997, and not to exceed Two Hundred Twenty-five Dollars (\$225.00)  
158 thereafter until August 1, 1999, and not to exceed Two Hundred  
159 Fifty Dollars (\$250.00) thereafter for those members admitted to  
160 practice law for three (3) years or more; and One Hundred Ten  
161 Dollars (\$110.00) for those members admitted to practice law for  
162 one (1) year, but less than three (3) years; and Fifty Dollars  
163 (\$50.00) for those members admitted to practice law less than one  
164 (1) year; and Fifty Dollars (\$50.00) for those members on inactive



165 status. All enrollment fees shall be paid for the same period,  
166 that is, for the period of one (1) year beginning on the day and  
167 month to be determined as provided in Section 73-3-127. The  
168 enrollment fees shall be paid to the secretary of the bar.

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

171 73-3-125. All lawyers over the age of seventy-five (75)  
172 years, and the judges of the Supreme Court, Court of Appeals and  
173 circuit, chancery and county judges, United States magistrates,  
174 judges of the bankruptcy courts, and the judges of the federal  
175 courts are exempt from the payment of enrollment fees. Lawyers  
176 over the age of seventy-five (75) years and judges 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. Lawyers who have retired from the practice of law  
180 because of age, serious illness or permanent disability may be  
181 placed on inactive status and shall be exempt from the payment of  
182 enrollment fees.

183 **SECTION 15.** Section 73-3-127, Mississippi Code of 1972, is  
184 reenacted as follows:

185 73-3-127. Any member failing to pay any enrollment fees  
186 within sixty (60) days after the same become due shall be  
187 considered delinquent and shall be given written notice of his  
188 delinquency mailed to him by United States mail, addressed to his  
189 last known address. If the delinquent fails to pay such  
190 enrollment fees within thirty (30) days after written notice of  
191 delinquency, he shall stand suspended from membership in the  
192 Mississippi Bar. It shall be the duty of the secretary, upon any  
193 member's becoming suspended as above stated, to notify the  
194 delinquent in writing by United States certified mail of his  
195 suspension, and to notify the courts of the county of his last  
196 known address of such fact, viz; the circuit court, the chancery  
197 court and the county court, if there be a county court, by mailing



198 such notice to the presiding judge and to the clerk of such court.  
199 Any member shall be reinstated upon payment of delinquent  
200 enrollment fees and a penalty in an amount equal to one-half (1/2)  
201 of the delinquent enrollment fees. The secretary, upon such  
202 payment, shall forthwith notify the courts above-mentioned of such  
203 fact and the clerks thereof shall file and preserve such notice.

204 **SECTION 16.** Section 73-3-129, Mississippi Code of 1972, is  
205 reenacted as follows:

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

213 **SECTION 17.** Section 73-3-131, Mississippi Code of 1972, is  
214 reenacted as follows:

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

222 **SECTION 18.** Section 73-3-133, Mississippi Code of 1972, is  
223 reenacted as follows:

224 73-3-133. The vice president and president-elect and the  
225 second vice president shall be members of the board of  
226 commissioners.

227 **SECTION 19.** Section 73-3-135, Mississippi Code of 1972, is  
228 reenacted as follows:

229 73-3-135. Vacancies in any office, including the office of  
230 commissioner, shall be filled by the board of commissioners and



231 any person so elected by the board of commissioners to fill a  
232 vacancy shall hold for the balance of the term of his immediate  
233 predecessor in office.

234         **SECTION 20.** Section 73-3-137, Mississippi Code of 1972, is  
235 reenacted as follows:

236         73-3-137. If any member of the board shall be absent from  
237 three (3) successive meetings thereof, unless the reason for his  
238 absence shall be temporary illness, the board may declare his  
239 office vacant and proceed to fill it as provided in the last  
240 preceding section.

241         **SECTION 21.** Section 73-3-139, Mississippi Code of 1972, is  
242 reenacted as follows:

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

259         **SECTION 22.** Section 73-3-140, Mississippi Code of 1972, is  
260 reenacted as follows:

261         73-3-140. The board of commissioners, any officer or the  
262 Executive Director of the Mississippi Bar shall not be authorized  
263 to lease any office space for the use of the Mississippi Bar if





264 such space is being leased for an annual amount in excess of the  
265 annual amount paid by the State Supreme Court for its office  
266 space. The lease of any office space by the Board of  
267 Commissioners, an officer or the Executive Director of the  
268 Mississippi Bar for the use of the Mississippi Bar must be  
269 approved by the Department of Finance and Administration. The  
270 bylaws of the bar shall not be in conflict with the provisions of  
271 this section. The provisions of this section shall not apply to  
272 any lease existing as of July 1, 1991.

273 **SECTION 23.** Section 73-3-141, Mississippi Code of 1972, is  
274 reenacted as follows:

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

282 **SECTION 24.** Section 73-3-143, Mississippi Code of 1972, is  
283 reenacted as follows:

284 73-3-143. (1) The board shall, subject to the approval of  
285 the justices of the Supreme Court, formulate reasonable rules  
286 governing the conduct of all persons admitted to practice.

287 (2) The board of commissioners shall render advisory  
288 opinions, upon the written request of any member of the bar, as to  
289 the validity or propriety of any proposed act or course of  
290 conduct.

291 **SECTION 25.** Section 73-3-145, Mississippi Code of 1972, is  
292 reenacted as follows:

293 73-3-145. (1) It shall be the duty of the Mississippi Bar,  
294 by and through its president, to recommend to the State  
295 Legislature such legislation relating to the courts, to matters of  
296 pleading, practice and procedure, and any other legislation which



297 in its judgment will improve the courts and the law, or render the  
298 members of the bar more efficient as ministers of justice and the  
299 courts more efficient as instrumentalities for its attainment.

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

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

310 **SECTION 26.** Section 73-3-171, Mississippi Code of 1972, is  
311 reenacted as follows:

312 73-3-171. The board of commissioners shall have no authority  
313 to regulate the fees or charges of lawyers for the rendition of  
314 their professional services. Nor shall it in any way undertake to  
315 regulate such fees or charges.

316 **SECTION 27.** Section 73-3-301, Mississippi Code of 1972, is  
317 reenacted as follows:

318 73-3-301. Any attorney regularly admitted to practice law in  
319 the State of Mississippi or any attorney specially admitted to  
320 practice law by a court of this state or any individual admitted  
321 to practice as an attorney in any other jurisdiction who regularly  
322 engages in the practice of law within this state as house counsel  
323 to corporations or other entities, counsel for governmental  
324 agencies, out-of-state lawyers admitted or permitted to practice  
325 law in this state by comity, bar examination or otherwise are  
326 subject to the exclusive and inherent disciplinary jurisdiction of  
327 the Supreme Court of Mississippi and the disciplinary agencies  
328 hereinafter established and designated; provided, however, nothing  
329 herein contained shall be construed to deny to any other court



330 such powers as are necessary for that court to maintain control  
331 over practice in and proceedings conducted before it, such as the  
332 power of contempt, nor to prohibit local bar associations from  
333 censuring, suspending or expelling their members from membership  
334 in such local bar association.

335 **SECTION 28.** Section 73-3-303, Mississippi Code of 1972, is  
336 reenacted as follows:

337 73-3-303. The jurisdiction of the court shall be  
338 administered in the manner hereinafter set out, and the following  
339 entities are hereby established and designated as agencies of the  
340 court for such purposes:

341 (a) The board of commissioners of the Mississippi Bar,  
342 including the Executive Director of the Mississippi Bar and  
343 complaint counsel.

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

345 (c) The complaint tribunals appointed by the Supreme  
346 Court of Mississippi.

347 **SECTION 29.** Section 73-3-305, Mississippi Code of 1972, is  
348 reenacted as follows:

349 73-3-305. The composition of the aforesaid disciplinary  
350 agencies shall be as follows:

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



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

369 (c) Complaint tribunals. Complaint tribunals for each  
370 of the Supreme Court districts of the state, consisting of three  
371 (3) members who are members of the bar of this state, shall be  
372 appointed by the Chief Justice of the Supreme Court to serve on a  
373 calendar year basis.

374 **SECTION 30.** Section 73-3-307, Mississippi Code of 1972, is  
375 reenacted as follows:

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



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

399 **SECTION 31.** Section 73-3-309, Mississippi Code of 1972, is  
400 reenacted as follows:

401 73-3-309. Complaints, irrespective of source, touching upon  
402 the professional conduct or conduct evincing unfitness for the  
403 practice of law made against attorneys who are members of the bar  
404 of this state or who may be temporarily practicing in this state  
405 under any rule of comity or courtesy, that may be received by or  
406 that may come to the attention of any judicial officer, the Board  
407 of Commissioners or any members of the Mississippi Bar, shall be  
408 referred to the committee on complaints for preliminary  
409 investigation and such disposition or further action as may be  
410 appropriate. The complaint must be in writing and signed by the  
411 person making the complaint or charge and the complaint must be  
412 sworn to or supported by affidavit or the signature of the  
413 complaining party witnessed by two (2) persons twenty-one (21)  
414 years of age or older. Additionally, the complaint shall contain  
415 the street address of the complaining party and each witness.

416 **SECTION 32.** Section 73-3-310, Mississippi Code of 1972, is  
417 reenacted as follows:

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

423 **SECTION 33.** Section 73-3-311, Mississippi Code of 1972, is  
424 reenacted as follows:

425 73-3-311. When any complaint or charge touching upon the  
426 professional conduct or conduct evincing unfitness for the



427 practice of law against any attorney subject to discipline  
428 hereunder is received by the committee on complaints, the  
429 committee shall, within ten (10) days thereof, take the following  
430 action:

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

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

436 (c) Dismiss any frivolous or ill-grounded complaint or  
437 one obviously without merit; or

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

440 **SECTION 34.** Section 73-3-313, Mississippi Code of 1972, is  
441 reenacted as follows:

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

454 **SECTION 35.** Section 73-3-315, Mississippi Code of 1972, is  
455 reenacted as follows:

456 73-3-315. The following rules for investigatory hearings by  
457 complaint counsel are for the guidance of complaint counsel and  
458 shall be strictly followed:



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

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

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

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

474 (e) Investigation by complaint counsel will not be  
475 stayed by settlement, compromise, admission of guilt or  
476 restitution.

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

480 (g) Testimony will not be elicited or received which is  
481 not germane to the charges being investigated by complaint  
482 counsel.

483 **SECTION 36.** Section 73-3-317, Mississippi Code of 1972, is  
484 reenacted as follows:

485 73-3-317. Complaint counsel will cause the testimony of any  
486 witnesses at an investigatory hearing to be taken and transcribed  
487 and shall certify the same to the committee on complaints, along  
488 with his written findings, within thirty (30) days from and after  
489 the date on which the complaint was received by him, except that,  
490 for good cause shown, upon application to the chairman of said  
491 committee, complaint counsel may be granted a total of not more



492 than thirty (30) additional days in which to make said  
493 certification. A copy of complaint counsel's report shall be sent  
494 to the accused attorney by certified mail, and the accused  
495 attorney shall have ten (10) days after the receipt by him of  
496 complaint counsel's report to file a written response thereto with  
497 the committee on complaints. Upon application to the chairman of  
498 the said committee, the accused attorney may be granted such  
499 additional time as circumstances warrant.

500       **SECTION 37.** Section 73-3-319, Mississippi Code of 1972, is  
501 reenacted as follows:

502       73-3-319. Within thirty (30) days of its receipt of  
503 complaint counsel's report, the committee on complaints shall take  
504 the following action:

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

516           (b) If upon review of the record, complaint counsel's  
517 report and any written response by the accused attorney, the  
518 committee determines that there is reasonable ground to believe  
519 that the accused attorney has been guilty of unprofessional  
520 conduct or conduct evincing unfitness for the practice of law, and  
521 is of the further opinion that a reprimand of the accused attorney  
522 is all that justice requires and will adequately afford the  
523 disciplinary sanctions required by the particular circumstances,  
524 the committee may administer a private reprimand, or it may, in





525 its discretion, make public the fact of the reprimand by having  
526 the same delivered in open court by the chancery or circuit court  
527 of the county of the accused attorney. However, such action shall  
528 not be taken except upon proper notice and hearing, such notice  
529 and hearing to be upon the same formal requirements and assuring  
530 to the accused attorney the same rights and privileges as provided  
531 in Section 73-3-321 et seq. for hearings upon complaints which, if  
532 proven, would warrant suspension or disbarment. Further, any  
533 decision of the complaint tribunal to issue a reprimand shall be  
534 appealable in the same manner and to the same extent as provided  
535 in Section 73-3-329. The committee, in its discretion, may  
536 require the accused attorney to appear before it for delivery of  
537 the reprimand or may forward it to him by registered mail. In any  
538 event, written notice of the delivery of such reprimand shall be  
539 given to the person filing the complaint, the clerk of the court,  
540 the Executive Director of the Mississippi Bar, and to the judges  
541 of the circuit and chancery court districts of the accused  
542 attorney.

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

554 **SECTION 38.** Section 73-3-321, Mississippi Code of 1972, is  
555 reenacted as follows:

556 73-3-321. (1) All formal complaints shall be filed in the  
557 court and shall be prosecuted in the name of the Mississippi Bar.



558 The formal complaint and other pleadings shall comply with the  
559 following requirements:

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

564 (b) The complaint shall set forth with fair and  
565 reasonable certainty the particulars of the offense of which the  
566 accused attorney is charged.

567 (c) All matters of defense or abatement asserted by the  
568 accused attorney shall be filed within twenty (20) days after a  
569 copy of the complaint is served upon the accused attorney.  
570 Provided that upon application to the clerk the accused attorney  
571 may be granted such additional time as the circumstances warrant.

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

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

588 **SECTION 39.** Section 73-3-323, Mississippi Code of 1972, is  
589 reenacted as follows:



590           73-3-323. Within five (5) days after the formal complaint is  
591 filed with the clerk of the court by complaint counsel, the chief  
592 justice shall designate a complaint tribunal to conduct a hearing  
593 on the formal complaint and to determine the matter; provided,  
594 however, the complaint tribunal so designated by the chief justice  
595 shall not be composed of members from the same supreme court  
596 district as that within which the accused attorney resides. The  
597 chief justice shall designate one (1) member of the complaint  
598 tribunal to be the presiding judge thereof. Any member of the  
599 complaint tribunal who is not an elected judge or chancellor shall  
600 be entitled to a per diem as authorized by Section 25-3-69 for  
601 each day's service in attending hearings or necessary business of  
602 the tribunal and shall receive reimbursement for necessary  
603 expenses and mileage as is authorized by Section 25-3-41. Said  
604 per diem and expense reimbursement, subject to funds being  
605 appropriated therefor, shall be paid from any available funds  
606 appropriated to the Supreme Court.

607           **SECTION 40.** Section 73-3-325, Mississippi Code of 1972, is  
608 reenacted as follows:

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



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

634 **SECTION 41.** Section 73-3-327, Mississippi Code of 1972, is  
635 reenacted as follows:

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

641 (a) Exonerate the accused attorney and dismiss the  
642 complaint.

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

645 (c) Suspend the attorney from the practice of law for  
646 any period of time.

647 (d) Permanently disbar the attorney.

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



656           **SECTION 42.** Section 73-3-329, Mississippi Code of 1972, is  
657 reenacted as follows:

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

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

666           (3) Either the attorney or the Mississippi Bar shall have  
667 the right to an appeal to the court, which appeal shall be  
668 perfected within thirty (30) days of the date of the judgment of  
669 the complaint tribunal by the aggrieved party filing a notice of  
670 appeal with the clerk of the court.

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

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

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

685           (7) Actions taken by the Supreme Court in suspending an  
686 attorney from the practice of law when required by Section  
687 93-11-157 or 93-11-163 are not actions from which an appeal may be  
688 taken under this section. Any appeal of the suspension of an



689 attorney from the practice of law that is required by Section  
690 93-11-157 or 93-11-163 shall be taken in accordance with the  
691 appeal procedure specified in Section 93-11-157 or 93-11-163, as  
692 the case may be, rather than the procedure specified in this  
693 section.

694 **SECTION 43.** Section 73-3-331, Mississippi Code of 1972, is  
695 reenacted as follows:

696 73-3-331. Upon a final judgment of suspension or disbarment  
697 by a complaint tribunal, the convicted attorney shall not be  
698 privileged to practice law within this state unless and until he  
699 is restored the privilege of practice as hereinafter provided.  
700 Appeal from a judgment by the complaint tribunal shall operate as  
701 a supersedeas. An appeal from a judgment of the Supreme Court  
702 suspending an attorney from the practice of law when required by  
703 Section 93-11-157 or 93-11-163 may operate as a supersedeas only  
704 as may be allowed under Section 93-11-157 or 93-11-163, as the  
705 case may be.

706 **SECTION 44.** Section 73-3-333, Mississippi Code of 1972, is  
707 reenacted as follows:

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

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

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

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



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

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

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

739 **SECTION 45.** Section 73-3-335, Mississippi Code of 1972, is  
740 reenacted as follows:

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



754 Modification or termination of suspension shall be granted only  
755 upon a showing of good cause and exceptional circumstances.

756 The procedure for reinstating an attorney to practice law  
757 after suspension for being out of compliance with an order of  
758 support, as defined in Section 93-11-153, and the payment of any  
759 fees for reinstating an attorney to practice law after suspension  
760 for being out of compliance, shall be governed by Section  
761 93-11-157 or 93-11-163, as the case may be.

762 **SECTION 46.** Section 73-3-337, Mississippi Code of 1972, is  
763 reenacted as follows:

764 73-3-337. Upon the termination of the period of suspension,  
765 the convicted attorney may be reinstated by the court, pursuant to  
766 a petition filed with the court and a copy thereof served upon the  
767 Mississippi Bar. A filing fee of Two Hundred Fifty Dollars  
768 (\$250.00) to defray the expense of investigating the matter shall  
769 be paid the Mississippi Bar upon the filing of such petition. The  
770 Mississippi Bar shall investigate the matter and report all  
771 relevant facts for the consideration of the court.

772 Any time after the expiration of three (3) years from and  
773 after the date of the final judgment of disbarment, the convicted  
774 attorney may petition the court for reinstatement. The petition  
775 shall be in writing and verified by the petitioner, and it shall  
776 set forth the full name, age, residence and mailing address of the  
777 petitioner, the offense or misconduct for which he was disbarred,  
778 a concise statement of the facts claimed to justify restoration  
779 and that he has made full amends and restitution to all persons,  
780 firms or legal entities, naming them, who may have suffered  
781 pecuniary loss by reason of the misconduct or offense for which he  
782 was disbarred. A copy of said petition shall be served on the  
783 Mississippi Bar, and a filing fee of Five Hundred Dollars  
784 (\$500.00) to defray the expense of investigating the matter shall  
785 be paid the Mississippi Bar upon the filing of each petition. Any  
786 petition for reinstatement subsequent to the initial petition





787 shall not be filed by the convicted attorney within one (1) year  
788 from the date of the adverse determination of any prior petition.

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

795 If the court is satisfied that all material allegations of  
796 the petition for reinstatement are true and that the ends of  
797 justice will be served, the court may reinstate the convicted  
798 attorney and enter judgment accordingly; provided, however, no  
799 judgment of reinstatement shall be entered by default or on an ex  
800 parte basis, and in all cases the court shall hear the Mississippi  
801 Bar and may hear any party named in the petition.

802 The procedure for reinstating an attorney to practice law  
803 after suspension for being out of compliance with an order of  
804 support, as defined in Section 93-11-153, and the payment of any  
805 fees for reinstating an attorney to practice law after suspension  
806 for being out of compliance, shall be governed by Section  
807 93-11-157 or 93-11-163, as the case may be.

808 **SECTION 47.** Section 73-3-339, Mississippi Code of 1972, is  
809 reenacted as follows:

810 73-3-339. Whenever any attorney subject to the disciplinary  
811 jurisdiction of the court shall be convicted in any state court or  
812 in any federal court, or enter a plea of guilty or a plea of nolo  
813 contendere therein, of any felony other than manslaughter or any  
814 violation of the United States Internal Revenue Code, or of any  
815 offense involving fraud, dishonesty, misrepresentation, deceit,  
816 failure to account for money or property of a client, or of any  
817 offense involving moral turpitude, a certified copy of the  
818 judgment of conviction shall be presented to the court by the  
819 board of commissioners. Upon the presentation of such certified



820 copy of judgment, the court shall forthwith strike the name of the  
821 attorney so convicted or who entered such a plea from the rolls of  
822 the Mississippi Bar and order his immediate suspension from  
823 practice, pending an appeal and final disposition of disciplinary  
824 proceedings. Such attorney will be reinstated immediately upon  
825 the reversal of his conviction for the offense that has resulted  
826 in his automatic suspension, but such reinstatement shall not  
827 terminate any disciplinary proceeding then pending against the  
828 attorney.

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

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

842 The judge of any court within this state in which an attorney  
843 has been convicted for any of the above enumerated offenses shall  
844 cause to be transmitted to the court and to the board of  
845 commissioners a certified copy of the judgment of conviction.

846 **SECTION 48.** Section 73-3-341, Mississippi Code of 1972, is  
847 reenacted as follows:

848 73-3-341. Whenever any attorney subject to the disciplinary  
849 jurisdiction of the court shall be disbarred or suspended from the  
850 practice of law in another jurisdiction, such disbarment or  
851 suspension shall be grounds for disciplinary action in this state,  
852 and certification of such disbarment or suspension by the



853 appropriate authority of such jurisdiction to the Executive  
854 Director of the Mississippi Bar shall be conclusive evidence of  
855 his guilt of the offense or unprofessional conduct on which said  
856 disbarment or suspension was ordered, and it shall not be  
857 necessary to prove the grounds of such offense in the disciplinary  
858 proceeding in this state. The sole issue to be determined in the  
859 disciplinary proceeding in this state shall be the extent of the  
860 final discipline to be imposed on said attorney, which may be less  
861 or more severe than the discipline imposed by the other  
862 jurisdiction.

863 **SECTION 49.** Section 73-3-343, Mississippi Code of 1972, is  
864 reenacted as follows:

865 73-3-343. All disciplinary agencies of the court, all court  
866 reporters, clerks, witnesses and parties are strictly enjoined to  
867 keep and maintain confidential all things concerning the matters  
868 under investigation and the proceedings thereon; provided,  
869 however, all proceedings before any complaint tribunal and in the  
870 court may be public if requested by the accused attorney. The  
871 complaint tribunal may, however, file with the Supreme Court an  
872 opinion or summary of the findings of fact and conclusions of law  
873 without disclosing the identity or residence of the accused, the  
874 complaining party or parties, witnesses, or any person, firm or  
875 corporation involved. Violation of this section or any part  
876 hereof shall be a misdemeanor punishable by a fine of not more  
877 than Five Hundred Dollars (\$500.00) or by imprisonment in the  
878 county jail for not more than thirty (30) days or by both.

879 **SECTION 50.** Section 73-3-345, Mississippi Code of 1972, is  
880 reenacted as follows:

881 73-3-345. All complaints filed pursuant hereto shall be  
882 absolutely privileged, and no lawsuit predicated thereon may be  
883 instituted, and each person, firm, association or legal entity  
884 filing such a complaint shall be immune from any civil suit  
885 predicated thereon. The board of commissioners, the committee on



886 complaints, the executive director, the complaint counsel, the  
887 complaint tribunals, and their assistants, staff and employees  
888 shall be immune from civil suit for any conduct arising out of the  
889 performance of their official duties. Every person shall be  
890 immune from civil suit for all of his sworn or written statements  
891 made or given in the course of any investigation, investigatory  
892 hearing, formal hearing or review proceedings held and conducted  
893 under these disciplinary rules.

894         **SECTION 51.** Section 73-3-347, Mississippi Code of 1972, is  
895 reenacted as follows:

896         73-3-347. For the purposes of Sections 73-3-347 through  
897 73-3-365, the term "personally incapable" to practice law shall  
898 include: (a) suffering from mental or physical illness of such  
899 character as to render the person afflicted incapable of managing  
900 himself, his affairs or the affairs of others with the integrity  
901 and competence requisite for the proper practice of law; or (b)  
902 habitual use of alcoholic beverages or liquids of any alcoholic  
903 content, hallucinogens, sedatives, drugs, narcotics or other  
904 mentally or physically disabling substances of any character  
905 whatsoever to any extent which impairs or tends to impair the  
906 ability to conduct efficiently and properly the affairs undertaken  
907 for a client in the practice of law.

908         **SECTION 52.** Section 73-3-349, Mississippi Code of 1972, is  
909 reenacted as follows:

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

914         **SECTION 53.** Section 73-3-351, Mississippi Code of 1972, is  
915 reenacted as follows:

916         73-3-351. Proceedings to determine whether an attorney is  
917 personally incapable to practice law shall be instituted and  
918 conducted in the same manner and upon the same procedure as



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

931       **SECTION 54.** Section 73-3-353, Mississippi Code of 1972, is  
932 reenacted as follows:

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

947       **SECTION 55.** Section 73-3-355, Mississippi Code of 1972, is  
948 reenacted as follows:

949       73-3-355. Service of process or notice to an attorney who  
950 has been committed or declared incompetent shall be accomplished  
951 in the same manner as that for process of incompetents in



952 proceedings in the chancery courts of Mississippi. After the  
953 appointment of a guardian ad litem, notices shall be served upon  
954 said guardian ad litem.

955 **SECTION 56.** Section 73-3-357, Mississippi Code of 1972, is  
956 reenacted as follows:

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

963 **SECTION 57.** Section 73-3-359, Mississippi Code of 1972, is  
964 reenacted as follows:

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

972 **SECTION 58.** Section 73-3-361, Mississippi Code of 1972, is  
973 reenacted as follows:

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

979 **SECTION 59.** Section 73-3-363, Mississippi Code of 1972, is  
980 reenacted as follows:

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



985           **SECTION 60.** Section 73-3-365, Mississippi Code of 1972, is  
986 reenacted as follows:

987           73-3-365. Procedures for reinstatement of an attorney  
988 suspended because of personal incapacity to practice law shall be,  
989 insofar as is applicable, the same as the procedure for  
990 reinstatement of an attorney following suspension upon  
991 disciplinary grounds. The petition for reinstatement shall be  
992 filed with the clerk of the court, and a copy of said petition  
993 shall be served upon the Mississippi Bar, and it shall be under a  
994 duty to investigate the matter, respond to the petition and appear  
995 at the hearing. The petitioner shall be required to supply such  
996 supporting proof of personal capacity as may be necessary and, in  
997 addition, the attorney may be required to submit to examinations  
998 by physicians or psychiatrists selected by the court. If the  
999 court is satisfied that the attorney has regained his capacity to  
1000 practice law, the court may reinstate the petitioner to the  
1001 practice of law and enter judgment accordingly; provided, however,  
1002 no judgment of reinstatement shall be entered by default or on an  
1003 ex parte basis, and in all cases the court shall hear the  
1004 Mississippi Bar. A filing fee of One Hundred Fifty Dollars  
1005 (\$150.00) to defray the expense of investigating the matter shall  
1006 be paid the Mississippi Bar upon the filing of each petition for  
1007 reinstatement, and any petition for reinstatement subsequent to  
1008 the initial petition shall not be filed within six (6) months from  
1009 the date of an adverse determination of any prior petition.

1010           **SECTION 61.** Section 73-3-367, Mississippi Code of 1972, is  
1011 reenacted as follows:

1012           73-3-367. All disciplinary agencies of the court are hereby  
1013 authorized to incur reasonable and necessary expenses in  
1014 connection with the investigation and disposition of charges and  
1015 complaints.

1016           **SECTION 62.** Section 73-3-369, Mississippi Code of 1972, is  
1017 reenacted as follows:



1018           73-3-369. The acceptance by a nonresident attorney of the  
1019 rights and privileges of the practice of law within this state, as  
1020 evidenced by his practice of law in this state, shall be deemed  
1021 equivalent to an appointment by such nonresident attorney of the  
1022 Executive Director of the Mississippi Bar to be his true and  
1023 lawful attorney, upon whom may be served all process summons or  
1024 notice of any and all proceedings against him instituted pursuant  
1025 to and conducted under these rules of disciplinary procedure; and  
1026 the acceptance of such rights and privileges and the practice of  
1027 law by any such nonresident attorney in this state shall be a  
1028 signification of his agreement that any such process, summons or  
1029 notice against him which is so served shall be of the same legal  
1030 force and validity as if served on him personally.

1031           Notice of the service of such process, summons or notice,  
1032 together with a copy of any complaint or charge, shall be mailed  
1033 forthwith by the executive director by United States certified  
1034 mail or registered mail, return receipt requested, restricted for  
1035 delivery to addressee only, and with postage prepaid, to such  
1036 nonresident attorney at his last known address.

1037           When such process, summons or notice is served as herein  
1038 provided it shall be deemed sufficient to give the court, and its  
1039 disciplinary agencies provided for herein jurisdiction over said  
1040 nonresident attorney for the purpose of investigating and finally  
1041 determining any complaint or charge touching upon the professional  
1042 conduct or conduct evincing unfitness for the practice of law or  
1043 the personal incapacity to practice law of any such nonresident  
1044 attorney.

1045           **SECTION 63.** Section 73-3-371, Mississippi Code of 1972, is  
1046 reenacted as follows:

1047           73-3-371. At any stage of the disciplinary proceedings, the  
1048 board of commissioners may, in the exercise of its sole  
1049 discretion, accept a plea of nolo contendere from the accused





1050 attorney and agree to the entry by the court of a consent order of  
1051 suspension or disbarment of the accused attorney.

1052 Notwithstanding the provisions of Section 73-3-315(e) to the  
1053 contrary, upon the acceptance of a plea of nolo contendere the  
1054 investigation or disciplinary procedure shall terminate, and the  
1055 board of commissioners will present to the court an agreed order  
1056 to be entered by the court either suspending or disbaring said  
1057 attorney by consent, as the particular circumstances of the matter  
1058 may require in the discretion of the board of commissioners. Said  
1059 order shall be a public record, and certified copies thereof shall  
1060 be mailed to the judges of the circuit and chancery court  
1061 districts within which the attorney resides.

1062 For the purpose of determining the discipline to be imposed  
1063 on the accused attorney, the board of commissioners shall consider  
1064 a plea of nolo contendere as tantamount to proof of guilt of the  
1065 offense or unprofessional conduct or personal disability to  
1066 practice law on which said disciplinary proceeding was grounded.

1067 **SECTION 64.** Section 73-3-373, Mississippi Code of 1972, is  
1068 reenacted as follows:

1069 73-3-373. This article shall not be construed to modify or  
1070 restrict the inherent right of the courts of record of the State  
1071 of Mississippi to supervise the bar as an incident to their power  
1072 to admit attorneys to practice and to the fulfillment of their  
1073 responsibility for the proper administration of justice, it being  
1074 here declared that it is an inherent power of the judicial branch  
1075 of government ultimately to determine the qualifications of those  
1076 to be admitted to practice in its court, for assisting in its  
1077 work, and to protect itself and the citizenry of this state in  
1078 this respect from the unfit, those lacking in sufficient learning  
1079 and those not possessing good moral character. Any disciplinary  
1080 proceeding in which the Mississippi Bar is a complaining party  
1081 shall be conducted in accordance with the remaining sections of  
1082 this article.



1083           **SECTION 65.** Section 73-3-403, Mississippi Code of 1972, is  
1084 amended as follows:

1085           73-3-403. Sections 73-3-101 through 73-3-145, 73-3-171 and  
1086 73-3-301 through 73-3-373, Mississippi Code of 1972, which create  
1087 the State Board of Bar Commissioners and prescribe its duties and  
1088 powers, shall stand repealed as of December 31, 2011.

1089           **SECTION 66.** This act shall take effect and be in force from  
1090 and after July 1, 2002.

