

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 885
(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, 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, 2006.

1089 **SECTION 66.** The Mississippi Bar shall comply with the
1090 Americans with Disabilities Act and provide any reasonable
1091 accommodations necessary for any person protected by the Americans
1092 with Disabilities Act to take the examination for admission to the
1093 Mississippi Bar.

1094 **SECTION 67.** This act shall take effect and be in force from
1095 and after July 1, 2002.

