

MAR 28 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

THE MISSISSIPPI BAR

COMPLAINANT

V.

CAUSE NO.: 2008-BD-00451-SCT

RICHARD F. "DICKIE" SCRUGGS

RESPONDENT

COPY

MOTION TO DISMISS FORMAL COMPLAINT

COMES NOW, the Respondent, Richard F. "Dickie" Scruggs, in the above-styled and numbered cause, by and through his counsels of record in this matter, and files the instant Motion to Dismiss Formal Complaint previously filed against said Respondent by the Complainant, The Mississippi Bar, and in support of said Motion would show unto this Honorable Court as follows, to-wit:

1. On or about March 18, 2008, the Complainant herein, The Mississippi Bar, filed the instant Formal Complaint against said Respondent, purportedly in accordance with Rule 6(a), Mississippi Rules of Discipline (MRD), alleging that "[O]n or about March 14, 2008, Mr. Scruggs tendered a plea of guilty in the United States District Court for the Northern District of Mississippi to one count of conspiracy to corruptly influence a state Circuit Judge in violation of Title 18, U.S.C. § 371."

2. Included with and in support of the aforesaid allegation was a certified copy of the Plea Agreement executed by said Respondent on or about

MOTION# 2008-871

March 14, 2008.

3. Rule 6(a), MRD, upon which said Formal Complaint relied, provides in pertinent part as follows:

Whenever any attorney subject to the disciplinary jurisdiction of the court shall be convicted in any court of any state or in any federal court or enter a plea of guilty or a plea of *nolo contendere* therein, or tender a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993) of any felony (other than manslaughter) . . . a certified copy of the judgment of conviction or order accepting or acknowledging the offer or tender of a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision in state or federal law shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof.

4. In addition, Rule 6.1, MRD, provides as follows:

PROCEDURE

(6.1) A Formal Complaint, with a certified copy of the criminal judgment of conviction or

order accepting or acknowledging the entry, offer or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (Supp. 1993),¹ or any similar provision of state or federal law attached and a motion for indefinite suspension pending appeals shall be filed with the court upon which the attorney shall be automatically suspended subject to the right of such attorney to move for reconsideration upon a showing that the judgment or conviction has been reversed or a new trial is granted.

5. Consequently, the Formal Complaint filed by the Complainant in this matter is fatally defective and should be dismissed because of the Complainant's failure to strictly comply with the requirements of said Rule 6(a), MRD, since no "certified copy of the judgment of conviction" or "order accepting or acknowledging the offer or tender of a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993)" have been entered in the subject criminal case nor was any such document attached to the Formal Complaint filed by the Complainant as required by the applicable Mississippi Rules of Discipline, said being, Rules 6(a) and 6(1), MRD.

¹ Non-adjudication or deferred procedure (Dismissal of action upon successful completion of certain court-imposed conditions).

6. Further evidence that the United States District Court for the Northern District of Mississippi has yet to accept the Respondent's guilty plea comes from Exhibit "1", the Plea Agreement, attached to the Formal Complaint filed by the Complainant, specifically, paragraph 6, which provides in pertinent and applicable part, as follows:

6. ACKNOWLEDGMENTS: NO OTHER AGREEMENTS: DEFENDANT IS IN FACT GUILTY

Apart from being advised of the applicability of the U. S. Sentencing Guidelines, no promise or representation whatsoever has been made to defendant as to what punishment the Court might impose if it accepts the plea(s) of guilty (underlining added by the undersigned counsel). Defendant agrees that the Court may continue all proceedings in the case until such date as the Court may set for consideration of the plea agreement, the plea of guilty and imposition of

sentence (underlining again added by
the undersigned counsel).

Consequently, since no "certified copy of a judgment of conviction" or other required order has been entered or attached to the instant Formal Complaint, the aforesaid Formal Complaint should be dismissed since it has been filed prematurely and is not in compliance with the strict requirements of the MRD as adopted by this Court.

7. Moreover, in addition to failing to comply with the strict requirements of said Rule 6, MRD, said Formal Complaint fails to provide the Respondent with due process of law as is required by this Court's ruling in *The Mississippi Bar v. Attorney G*, 630 So. 2d 344 (Miss. 1994), where this Court has held as follows:

This Court, however, is bound by its own disciplinary rules. Since attorney disbarment and suspension cases are quasi-criminal in character, this Court must construe the rules strictly. In the *Matter of Richard A. Thalheim, Jr., Plaintiff-Appellant*, 853 F. 2d 383 (5th Cir. 1988), the Fifth Circuit Court of Appeals held:

Attorney disbarment and suspension cases are quasi-criminal in character. Accordingly, the court's disciplinary rules are to be read strictly,

resolving any ambiguity in favor of the person charged. *Id.* at 388 (citation omitted).

The above case further states that:

When a court undertakes to sanction an attorney for violating court rules, it is incumbent upon the sanctioning court to observe scrupulously its own disciplinary procedure. If the rules are inadequate, the court can proceed to amend them. But unless and until such amendment occurs, attorneys have the right to rely upon the rules. *Id.* at 390.

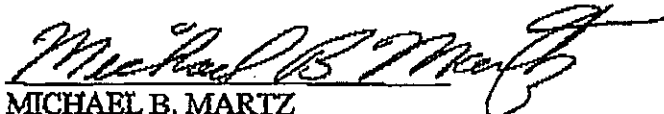
WHEREFORE, PREMISES CONSIDERED, the Respondent requests that the instant Formal Complaint be dismissed because said Formal Complaint does not afford the Respondent with due process of law and does not strictly comply with the requirements of Rule 6 of the Mississippi Rules of Discipline.

In addition, if the Respondent has prayed for insufficient or improper relief, he now prays for whatever relief to which he is entitled, either at law or in equity, as the Court deems appropriate or proper.

Respectfully submitted this the 28th day of March, 2008.

RICHARD F. "DICKIE" SCRUGGS

BY:


MICHAEL B. MARTZ
CHARLES J. MIKHAIL

COUNSELS FOR THE
RESPONDENT, RICHARD F.
"DICKIE" SCRUGGS

MICHAEL B. MARTZ (MSB #1908)
ATTORNEY AT LAW
215 LOUIS WILSON DRIVE
BRANDON, MISSISSIPPI 39042-3434
TELEPHONE: (601) 825-0152
CELL: (601) 955-5293
FACSIMILE: (601) 825-0152

CHARLES J. MIKHAIL (MSB #3018)
ATTORNEY AT LAW
POST OFFICE BOX 8745
MOSS POINT, MISSISSIPPI 39562
TELEPHONE: (228) 623-0194

CERTIFICATE OF SERVICE - *for me to general counsel to cover*

I, Michael B. Martz, do hereby certify that I have this date mailed a true and correct copy of the Foregoing Motion to Dismiss Formal Complaint filed against Richard F. "Dickie" Scruggs by the Mississippi Bar to the Complainant's Attorneys of Record, Adam B. Kilgore, Esq., and James R. Clark, Esq. at their last known mailing address of:

Adam B. Kilgore, Esq.
The Mississippi Bar
Post Office Box 2168
Jackson, Mississippi 39225

James R. Clark, Esq.
The Mississippi Bar
Post Office Box 2168
Jackson, Mississippi 39225

This the 20th day of March, 2008.


MICHAEL B. MARTZ