

Alabama Rules of Disciplinary Procedure

Rule 16.

Filing and service of formal charges.

(a) *Formal Charges.* The formal charges in a disciplinary proceeding shall be filed with the Disciplinary Clerk and served upon the respondent as provided in paragraph (b) of this Rule.

(b) *Uniform Service Rule.* Lawyers authorized to practice law in the State of Alabama shall keep the membership division of the Alabama State Bar informed, in writing, of their current name, address, and telephone number. The Supreme Court of Alabama and the Alabama State Bar and its agents, commissions, committees, and boards may rely on the address on file with the membership department in all efforts to contact, communicate with, and perfect service upon a lawyer authorized to practice law in Alabama. A lawyer who provides only a post office box address to the membership department of the Alabama State Bar shall be deemed to have waived personal service for proceedings arising out of these Rules. Notification of a change of address given to any department of the State Bar of Alabama other than in writing to the membership department shall not satisfy the requirement of this rule. In all matters requiring personal service under the Alabama Rules of Disciplinary Procedure, service may be perfected in the following manner:

(1) **ACKNOWLEDGEMENT OF SERVICE:** An acknowledgment of service from the respondent attorney shall constitute conclusive proof of service and shall eliminate the need to use any other form of service.

(2) **WRITTEN RESPONSE FROM RESPONDENT:** A written response from the respondent or respondent's counsel shall constitute conclusive proof of service and shall eliminate the need to use any other form of service.

(3) In the absence of acknowledgment of service or a written response from the respondent or the respondent's counsel, and subject to the provisions of subparagraph (4) below, the respondent shall be served in the following manner:

(A) **Personal service.** Service may be accomplished by the sheriff, a court-approved agent for service of process, or any person approved by a Disciplinary Hearing Officer, a Disciplinary Board, or the Disciplinary Commission of the Alabama State Bar. Receipt of a return of service from the sheriff or any other person approved for service of the document indicating a failure of service or an inability to perfect service shall constitute conclusive proof that service could not be perfected by personal service.

(B) **Service by publication.** In the event that personal service cannot be

perfected, or when the respondent has provided only a post office box to the membership department and the respondent has not acknowledged service within twenty-eight (28) days of a mailing to the respondent's post office box, service may be accomplished by publication in any single issue of the official publication of the Alabama State Bar.

(4) When it appears from an affidavit made by the Office of General Counsel of the Alabama State Bar that the respondent has left the State, or cannot, after due diligence, be found within the State, or seeks to avoid service, a Disciplinary Hearing Officer, the Disciplinary Commission, or a Disciplinary Board may authorize service by publication without first attempting personal service. The affidavit must demonstrate recent unsuccessful attempts at personal service upon the respondent regarding other or related disciplinary matters at the respondent's address shown on the records of the membership department of the Alabama State Bar.

(5) Whenever service of pleadings or other documents subsequent to the original complaint is required or permitted to be made upon a party who is represented by counsel, the service shall be made upon counsel unless service upon the party himself is required by these Rules. Service upon counsel shall be made by delivering a copy to him or her by mailing it to counsel at his or her last known address. As used in this rule, the term "delivering a copy" means handing it to counsel or leaving it at his or her office with a responsible person, or, if the office is closed or if the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with a responsible person. Service by mail is complete upon mailing. Proof of service may be made by certificate of counsel or counsel's employee, by written admission, by affidavit, or by other satisfactory proof. Failure to make proof of service shall not affect the validity of service.

[Amended eff. 8-1-2000.]

Note from the reporter of decisions: The order amending Rule 16, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.