

RULES OF PROCEDURE FOR THE ALABAMA COURT OF THE JUDICIARY

RULE 1. DEFINITIONS

Definitions when used in these Rules:

(A) “Judiciary Article” means the new Judicial Article of the Constitution of Alabama proclaimed December 27, 1972, to be Amendment No. 328 to the Constitution of Alabama, 1901.

(B) “The Court” means the Alabama Court of the Judiciary created by the Judicial Article.

(C) “Judge” means any justice or judge of a court of the judicial system of the State.

(D) The terms “Service” and “Notice” shall include service or notice by personal delivery, certified mail, or registered mail.

(E) “Complaint” means a formal written charge filed by the Judicial Inquiry Commission.

RULE 2. SECRETARY

The Clerk of the Court of Civil Appeals of Alabama is designated as Secretary in all proceedings before the Court. He is empowered to perform those duties ordinarily performed by a clerk of a court of record in this state, and such other duties as the Court may delegate to him. He shall be the custodian of the records of the court, which shall be preserved by him.

Note from the reporter of decisions: The order adopting the Rules of Procedure for the Alabama Court of the Judiciary was issued on March 11, 1974. Two subsequent orders adopting Rule 26 and amending Rule 2 were issued on March 12, 1974, and on March 15, 1976, respectively. Apparently, these orders were never published.

RULE 3. COMPLAINT; FILING, CONTENTS, ETC.; RIGHT TO NOTICE, RESPONSIVE PLEADINGS, ETC.

Formal proceedings respecting any judge shall be commenced by the filing of a complaint in the office of the secretary in Montgomery. The complaint shall specify in plain and concise language the charges against the judge and the allegations of fact upon which such charges are based, and, in addition, may advise the judge of his right to file responsive pleadings to the charges not more than 30 days after service of notice upon him. No other process or summons shall be necessary to institute said proceedings.

[Amended effective October 10, 2001.]

Note from the reporter of decisions: The order amending Rules 3, 6, 9, 10, and 16 and adopting

rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.

RULE 4. SERVICE OF NOTICE OF COMPLAINT

Service of notice of filing of a complaint shall be made by the Secretary or Chief Judge of the Court by certified mail or registered mail, with a copy of the complaint to be sent to the judge at his chambers, or at his last known residence address, or, in the alternative, service may be made in a manner consistent with rules for service of process in civil cases in Alabama.

RULE 5. FILING RESPONSIVE PLEADINGS

The judge may file responsive pleadings as provided in the Alabama Rules of Civil Procedure. Any such pleadings shall be filed in the Office of the Secretary in Montgomery by the judge not more than thirty (30) days following the service of the notice and the copy of the complaint upon him. For good cause shown, the Court may extend the time for filing such pleadings. All such responsive pleadings filed by the judge shall be in plain and concise language designed to fairly respond to the charges brought against him.

RULE 6. WHEN COURT MEMBERS NOT TO PARTICIPATE

No member of the court may participate in any proceedings before the court involving his own conduct or involving a matter in which he is interested or involved.

[Amended effective October 10, 2001.]

Note from the reporter of decisions: The order amending rules 3, 6, 9, 10 and 16 and adopting Rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.

RULE 7. DILATORY ACTIONS DISFAVORED

Dilatory motions will be treated with disfavor. Any action which, in the opinion of the Court, would interfere with the prompt disposition of the proceedings pending before the Court shall be discouraged, and may be avoided by proper order of the Court.

RULE 8. DATE AND PLACE OF HEARING

The Court shall fix a date for hearing upon the complaint as expeditiously as possible. Notice of the date, time and place of the hearing shall be served upon the judge and any counsel designated by him not less than thirty (30) days prior to the date upon which the hearing is set unless otherwise agreed to by the parties and the Court.

RULE 9. NATURE OF HEARINGS

Hearings on the complaint shall be public before all qualified members of the court; provided however that the judge charged may agree to be tried by fewer than all qualified members but no fewer than a quorum. The chief judge shall decide all preliminary motions and all procedural and evidentiary questions.

[Amended effective October 10, 2001.]

Note from the reporter of decisions: The order amending Rule 3, 6, 9, 10, and 16 and adopting Rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.

RULE 10. RULES OF PROCEDURE AND EVIDENCE TO GOVERN

The process and procedure before the court shall be as simple and direct as reasonably may be. Except where inappropriate, or otherwise provided for by these rules, the provisions of the Alabama Rules of Civil Procedure and the rules of evidence used in civil cases in Alabama shall govern proceedings before the court; but the allegations of the complaint must be proved by clear and convincing evidence, and no judge may be compelled to give evidence against himself or herself; provided, however, that a judge who chooses to testify on his or her own behalf shall be subject to cross-examination.

[Amended effective October 10, 2001.]

Note from the reporter of decisions: The order amending Rules 3, 6, 9, 10, and 16 and adopting rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.

RULE 11. COURT TO PROCEED WHERE NO PLEADINGS FILED OR APPEARANCE MADE

Notwithstanding the failure of any judge to file responsive pleadings or to appear, the Court may proceed with the hearing, provided however that all evidence in support of the complaint shall be heard by the Court in public hearing or filed in the course of public hearing.

RULE 12. APPOINTMENT OF COUNSEL

Whenever it appears to the Court to be necessary or advisable, the Court may appoint counsel to represent any person who may be materially affected by the proceedings.

RULE 13. PERSONS DESIGNATED AS INTERESTED PARTY

The Court may permit, upon request, any person who may be materially affected by the hearing to be designated as an interested party who shall be entitled to be represented by personal counsel to attend all hearings, to cross-examine witnesses, and to adduce evidence, if the Court deems same to be pertinent.

RULE 14. WITNESSES

Any witness at any hearing of the Court shall, upon leave of the Court, have the right to be represented by counsel, but such counsel shall not participate in the hearing, or cross-examine witnesses, except by permission of the Court. The examination of all witnesses shall be conducted by counsel for the parties, and may also be conducted by any of the members of the Court.

RULE 15. OBLIGATION TO ASSIST, AID, ETC., COURT

It shall be the obligation of all judges and attorneys licensed to practice law in this state, when called upon to assist in any hearing, or to testify concerning any matter as to which he or they do not properly claim privilege as an attorney, to so assist, to testify and aid the Court in their duties.

RULE 16. DECISIONS, ORDERS, ETC., OF COURT

At the conclusion of the hearing, the court shall enter an appropriate order, exercising the authority vested in it by section 6.18 of the judicial article, or shall dismiss the complaint. With respect to all matters other than removal from office, the court shall convict only with the concurrence of no fewer than six of its nine members. With respect to removal from office, the court shall convict only with the concurrence of all members sitting. A failure to convict within ten days after the conclusion of the hearing shall constitute an acquittal. The decision of the court shall be final, subject to appeal rights contained in section 6.18(b) of the judicial article.

[Amended effective October 10, 2001; February 4, 2002.]

Note from the reporter of decisions: The order amending Rules 3, 6, 9, 10, and 16 and adopting Rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.

Court Note

A revision to Rule 16 is necessary because the former rule provided that a decision could be made based on the vote of only three members. Amendment No. 581, Alabama Constitution of 1901, effective June 19, 1996, increased the membership of the Court of the Judiciary to nine members.

Note from the reporter of decisions: The order amending Rule 16 and adopting the Court Note

effective February 4, 2002, is published in that volume of Alabama Reporter that contains cases from 810 So. 2d..

RULE 17. DESIGNATION OF BAILIFF; PUNISHMENT FOR CONTEMPT

The Court may punish breaches of order and unprofessional conduct on the part of counsel, or any other person, by censure, exclusion from the hearing, if appropriate, or by punishment for contempt as in civil proceedings. The Court may designate a person, or persons, including the Marshal and/or Assistant Marshal of the Supreme Court of Alabama, to act as bailiff or bailiffs to be in attendance at all of its hearings.

RULE 18. JUDICIAL NOTICE

The Court shall, upon advising the parties, have the right to take judicial notice of such matters of which courts of record of this state may take judicial notice.

RULE 19. PLACE OF HEARING

The Court shall conduct the hearing at such place or places in the state as it shall determine will best serve the public interest.

RULE 20. COURT ORDERS

All orders of the Court shall be in writing, and shall be preserved by the Secretary in the permanent records of the Court.

RULE 21. TRANSCRIPT OF PROCEEDINGS

A verbatim transcript of the proceedings before the Court shall be kept, and the original thereof transcribed and filed in the Office of the Secretary in Montgomery as a part of the record of the proceedings. The transcript shall be prepared by a reporter designated by the Court. The parties, with the approval of the Court, may agree on a different method, other than a reporter's shorthand or machine method, of recording and transcribing the proceedings.

RULE 22. SUBPOENAS; WITNESS FEES

The Secretary shall prepare and have available for issuance at the request of any party, subpoenas returnable before the Alabama Court of the Judiciary. All witnesses shall be entitled to such witness fees and expenses as in any civil proceedings in this state.

RULE 23. COPIES OF RULES

Prior to the hearings, all interested parties that appear of record at the time of the commencement of the proceedings, and any interested party who may subsequently become a part of such proceedings, shall be entitled to receive copies of these Rules of Procedure, and shall

be governed thereby.

RULE 24. PRESIDING JUDGE

In the event the Chief Judge is disqualified or is unable to serve, then the presiding judge shall be an appellate justice or judge appointed to replace the Chief Judge or the most senior circuit judge serving.

RULE 25. EFFECTIVE DATE

The effective date of these Rules shall be the 11th day of March, 1974.

Note from the reporter of decisions: The order adopting the Rules of Procedure for the Alabama Court of the Judiciary was issued on March 11, 1974. Two subsequent orders adopting Rule 26 and amending Rule 2 were issued on March 12, 1974, and on March 15, 1976, respectively. Apparently, these orders were never published.

RULE 26. SELECTION AND APPOINTMENT OF ALTERNATE JUDGES.

In the event of the disqualification or inability of a member of the Alabama Court of the Judiciary to serve, then his replacement shall be selected from alternates. The Supreme Court of Alabama shall select an alternate judge of an appellate court; the Circuit Judges' Association shall select an Alternate 1 and Alternate 2 from the circuit judges of the state; and the governing body of the Alabama State Bar shall select an Alternate 1 and Alternate 2 from the membership of the State Bar.

Whenever any judge of the Alabama Court of the Judiciary is disqualified or otherwise unable to serve on a case then he shall notify the Chief Judge and the Secretary of the Court. The Chief Judge shall appoint the first alternate circuit judge or the first alternate bar member to replace the regular circuit judge or bar member who is disqualified or unable to serve. In the event that the first alternate is disqualified or unable to serve, then the Chief Judge shall appoint the second alternate. In the event the Chief Judge is disqualified or unable to serve, then the Secretary will appoint his alternate to take the place of the Chief Judge.

[Adopted effective March 12, 1974.]

Note from the reporter of decision: The order adopting the Rules of Procedure for the Alabama Court of the Judiciary was issued on March 11, 1974. Two subsequent orders adopting Rule 26 and amending Rule 2 were issued on March 12, 1974, and on March 15, 1976, respectively. Apparently, these orders were never published.

RULE 27. PUBLICATION

A. These rules shall be deposited with the Clerk of the Supreme Court of Alabama and shall be published in all publications wherein the rules of the Supreme Court of Alabama are

published.

B. All amendments to these rules shall be effective immediately as to all pending and future investigations and charges.

[Adopted effective October 10, 2001.]

Note from the reporter of decisions: The order amending Rules 3, 6, 9, 10, and 16 and adopting Rule 27 effective October 10, 2001, as well as Justice Houston's writing dissenting in part from that order, is published in that volume of Alabama Reporter that contains Alabama cases from 802 So. 2d.