

Alabama Rules of Disciplinary Procedure

Rule 12.

Procedures.

An investigation of alleged misconduct, whether upon complaint or otherwise, shall be initiated and conducted by the General Counsel, as provided in paragraph (a) of this rule, by a local grievance committee, as provided in paragraph (b) of this rule, or by the Supreme Court of Alabama, as provided in paragraph (c) of this rule. A recommendation of the General Counsel or a local grievance committee based upon such investigation shall be submitted to, and acted upon by, the Disciplinary Commission, as provided in paragraph (d) of this rule. A decision by the Disciplinary Commission to enforce a private or public reprimand shall be responded to by the respondent, as provided in paragraph (e) of this rule. A disciplinary charge filed by the General Counsel shall be tried to the Disciplinary Board by a formal hearing, as provided in paragraph (f) of this rule. The parties shall have the right to appeal from an adverse decision, as provided in paragraph (g) of this rule.

(a) Investigation by General Counsel.

- (1) The General Counsel for the Alabama State Bar shall have the right to investigate an allegation or complaint of misconduct of any member of the Alabama State Bar and any nonresident lawyer admitted pro hac vice pursuant to Rule VII, Rules Governing Admission to the Alabama State Bar (hereinafter referred to as "respondent").
- (2) Upon the conclusion of an investigation, the General Counsel shall decide whether the matter warrants dismissal, the imposition of a private or public reprimand, or the filing of formal charges with the Disciplinary Board. In making this decision, the General Counsel, without a formal hearing, shall consider all legal evidence pertinent to the issue, including any prior ethical violations by the respondent. The decision, along with all relevant materials considered by the General Counsel, shall be reported as a recommendation to the Disciplinary Commission.
- (3) Notice to Law Firms. When a formal disciplinary or investigative file is opened by the General Counsel or by a local grievance committee as provided in paragraph (b) of this rule, the respondent shall disclose the fact that a disciplinary file has been opened to the respondent's current law firm by notifying the managing partner, senior partner, executive committee, or management committee. If the respondent changes law firms after a disciplinary file has been opened, but before a final determination has been made by the Disciplinary Commission or the Disciplinary Board, the respondent shall disclose the fact that a disciplinary file has been opened to the respondent's new law firm by

notifying the managing partner, senior partner, executive committee, or management committee of the new firm. If the respondent was associated with a different law firm at the time of the act or acts giving rise to a complaint, then the respondent shall also notify that law firm. Disclosure shall be in writing and in the following form:

"A complaint of unethical conduct against me has been filed with the Alabama State Bar. The nature of the allegations are: [Provide a general description.] This notice is provided pursuant to Rule 12(a)(3) of the Alabama Rules of Disciplinary Procedure."

The notice shall be provided within 15 days of notice that a disciplinary file has been opened, and a copy of the above notice shall be served on the Office of General Counsel of the Alabama State Bar.

(b) Investigation by Local Grievance Committee.

- (1) A local grievance committee, approved pursuant to Rule 7 of these rules, shall have the right to investigate an allegation or complaint of misconduct of any member of the Alabama State Bar and any nonresident lawyer admitted pro hac vice pursuant to Rule VII, Rules Governing Admission to the Alabama State Bar.
- (2) Upon the conclusion of an investigation, the local grievance committee shall decide whether the matter warrants dismissal, the imposition of a private or public reprimand, or the filing of formal charges before the Disciplinary Board. In making its decision, the local grievance committee, without a formal hearing, shall consider all legal evidence pertinent to the issue, including the respondent's prior ethical violations, if any. This decision, along with all relevant materials considered by the local grievance committee, shall be reported, as a recommendation, to the Disciplinary Commission.
- (3) In the event the Disciplinary Commission modifies the recommendation of a local grievance committee, the matter shall be continued until the next meeting of the Disciplinary Commission. The local grievance committee shall be notified of the modification by the Disciplinary Commission, and it may file a written request for reconsideration by the Disciplinary Commission. The Disciplinary Commission may require the attendance of a representative of the local grievance committee at any meeting at which such a modification is reconsidered.

(c) Investigation by Supreme Court.

- (1) The Supreme Court of Alabama may exercise its authority to investigate an allegation or complaint of misconduct filed against a member of the Board of Bar Commissioners of the Alabama State Bar, the Executive Director of the Alabama State Bar (assuming the Executive Director is a licensed attorney), the General Counsel for the Alabama State Bar, a Disciplinary Hearing Officer, or a licensed attorney employed by the Alabama State Bar; the Supreme Court may investigate the alleged or complained-of misconduct even if the party is no longer associated with or employed by the Alabama State Bar.
- (2) The Disciplinary Clerk of the Alabama State Bar shall, upon receiving an allegation or complaint of misconduct filed against any individual listed in paragraph(c)(1) of this rule, immediately forward to the Clerk of the Supreme Court of Alabama such allegation or complaint of misconduct.
- (3) The Supreme Court of Alabama may direct the General Counsel to conduct an investigation into the allegation or complaint of misconduct mentioned in paragraph (c)(1) of this rule, or the Supreme Court may, at the expense of the Alabama State Bar, appoint an attorney of its choosing to conduct such an investigation. If the Supreme Court of Alabama appoints an attorney to conduct the investigation, the appointed attorney shall have the same authority afforded the General Counsel under these rules to conduct said investigation.
- (4) Upon the conclusion of an investigation, the Supreme Court of Alabama shall decide, by majority vote, whether the matter should be concluded by dismissal, by imposition of a private or public reprimand, or by the filing of formal charges before the Disciplinary Board.
- (5) In the event the Supreme Court of Alabama decides that formal charges be filed before the Disciplinary Board, the Supreme Court may appoint the General Counsel to prosecute the matter, or the Supreme Court may, at the expense of the Alabama State Bar, appoint an attorney of its choosing to prosecute the matter. If the Supreme Court of Alabama appoints an attorney to prosecute the matter, the appointed attorney shall have the same authority afforded the General Counsel under these rules to prosecute the matter.

(d) *Action by Disciplinary Commission.*

- (1) Upon receiving a recommendation, as provided in paragraph (a)(2) or paragraph (b)(2) of this rule, the Disciplinary Commission shall decide, by majority vote, whether the matter should be concluded by dismissal, by imposition of a private or public reprimand, or by the filing of formal charges before the Disciplinary Board. The Disciplinary Clerk of the Alabama State Bar shall send notice to the Clerk of the Supreme Court of

Alabama of a decision by the Disciplinary Commission to conclude a matter by dismissal within fourteen (14) days of the Disciplinary Commission's decision.

- (2) The notice by the Disciplinary Commission to the respondent of a decision to impose a public or private reprimand shall include a recital of the Disciplinary Rule, and a concise finding of fact constituting the misconduct, upon which the proposed discipline is based.

(e) Action by Respondent. A respondent, within fourteen (14) days after being advised of the decision to impose a private or public reprimand, may do any of the following:

- (1) Accept the proposed private or public reprimand;
- (2) Submit in writing to the Disciplinary Commission additional information and request the Disciplinary Commission to reconsider the proposed discipline. If, after reconsideration, the Disciplinary Commission approves a private or public reprimand, the respondent may accept such sanction or demand charges, as provided in paragraph (e)(3) below, within fourteen (14) days after being advised of the decision of the Disciplinary Commission; or
- (3) Demand, in writing and delivered to the General Counsel, that the General Counsel file formal charges with the Disciplinary Board, in accord with paragraph (f) of this rule.

(f) Formal Hearing by Disciplinary Board.

- (1) Formal disciplinary proceedings before a Disciplinary Board shall be instituted by the General Counsel's filing with the Disciplinary Clerk of the Alabama State Bar a petition, which shall reasonably inform the respondent of the alleged misconduct. The Disciplinary Clerk shall assign and transmit the petition to a Disciplinary Hearing Officer and a Disciplinary Board. A copy of the petition shall be served upon the respondent. The respondent shall serve a copy of his or her answer upon the General Counsel and file the original with the Disciplinary Clerk within twenty-eight (28) days after the service of the petition, unless the Disciplinary Hearing Officer extends the time for answering the petition. If the respondent fails to answer, the charges shall be deemed admitted; provided, however, that if the failure to answer was attributable to mistake, inadvertence, surprise, or excusable neglect, a respondent who fails to answer within the time provided may obtain permission from the Disciplinary Hearing Officer to file an out-of-time answer.
- (2) Following the service of the answer or upon failure to answer, a time, date, and place for a hearing shall be set by the Disciplinary Hearing Officer.

- (3) The Disciplinary Hearing Officer shall serve a notice upon the General Counsel and the respondent, or the respondent's counsel, at least fourteen (14) days in advance of the date set for the hearing, stating the time, date, and place of the hearing. The notice shall advise the respondent that he or she is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence in his or her own behalf.
- (4) If the Disciplinary Board finds that the respondent has violated the Alabama Rules of Professional Conduct, the Disciplinary Board shall permit the General Counsel and the respondent to present matters in aggravation and in mitigation, including any prior violations of the Rules of Professional Conduct by the respondent, or the absence of such violations, for consideration by the Disciplinary Board in determining the appropriate discipline. If the charges have been deemed admitted because the respondent failed to file an answer within the prescribed time, the respondent will be advised that the purpose of the hearing is to determine punishment and that the Disciplinary Board will consider only those matters relevant in aggravation and in mitigation of punishment.

(g) Review by the Supreme Court.

- (1) The parties have a right to appeal an adverse decision of the Disciplinary Board or, in a Rule 20 proceeding, an adverse decision of the Disciplinary Commission, to the Supreme Court of Alabama by filing a notice of appeal with the Disciplinary Clerk of the Alabama State Bar and the Clerk of the Supreme Court within fourteen (14) days after the written decision of the Disciplinary Board or the Disciplinary Commission is filed with the Disciplinary Clerk. The General Counsel has a right to appeal to the Supreme Court of Alabama, in the manner set forth in the preceding sentence, a decision by the Disciplinary Commission, made pursuant to paragraph (d)(1) of this rule, that a matter should be concluded by dismissal. Regardless of the time limitations set out in the Alabama Rules of Civil Procedure, any posttrial motions must be filed within fourteen (14) days after the written decision of the Disciplinary Board or the Disciplinary Commission is filed with the Disciplinary Clerk. Any posttrial motion filed after fourteen (14) days from the filing of the written decision shall be dismissed as untimely and shall not toll the time for filing an appeal to the Supreme Court of Alabama.
- (2) The record on appeal shall include: (A) all filings except those listed in Rule 10(a), Alabama Rules of Appellate Procedure, unless the inclusion of those items is specifically requested by the respondent or by the Office of General Counsel; (B) a transcript of testimony; and (C) the decision of the Disciplinary Board or the Disciplinary Commission.

- (3) Within seven (7) days after filing notice of appeal, the appellant shall make satisfactory arrangements with the Disciplinary Clerk for payment of the costs of photocopying a sufficient number of copies of the record on appeal in order to furnish one copy each to the Supreme Court of Alabama, the appellee, and the appellant, if the appellant so desires to order a copy.
- (4) Within fourteen (14) days thereafter, the Disciplinary Clerk shall forward the record on appeal to the Clerk of the Supreme Court of Alabama.
- (5) In every case of suspension or disbarment from practice in which the respondent chooses not to file an appeal, within fourteen (14) days of the expiration of the respondent's time to appeal, the Disciplinary Clerk shall notify the Supreme Court of Alabama of the respondent's suspension or disbarment and forward to the Supreme Court the information set forth in paragraph (g)(2) of this rule.
- (6) If the Supreme Court of Alabama determines that the Disciplinary Clerk has failed to comply with paragraph (g)(5) of this rule, the Supreme Court shall cause notice to be sent to Disciplinary Clerk, notifying the Disciplinary Clerk, in general terms, of the deficiency. If the Disciplinary Clerk fails to correct the deficiency within such time as the Supreme Court of Alabama shall direct, the Supreme Court may cause the Disciplinary Clerk to appear before the Supreme Court to show cause why he or she should not be held in contempt for failure to correct the deficiency.

[Amended 12-6-90, eff. 1-1-91; Amended 10-14-94, eff. 1-1-95; Amended eff. 8-1-2000; Amended 9-12-2008, eff. 10-6-2008; Amended 1-12-2015; Amended eff. 7-23-2021.]

Note from the reporter of decisions: The order amending Rule 12(a)(2), 12(b)(3), 12(e), and 12(g) and adopting Rule 12(a)(3) and 12(f), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.1, Rule 4.2, Rule 5, Rule 8, Rule 12, Rule 15, Rule 20, Rule 21, Rule 22, Rule 23, Rule 27, Rule 28, Rule 29, Rule 32, Rule 33, and Rule 35, and adopting Rule 12.1, effective October 6, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So.2d.

Note from the reporter of decisions: The order amending Rule 12(f), effective January 12, 2015, is published in that volume of *Alabama Reporter* that contains Alabama cases from 154 So. 3d.

Note from the reporter of decisions: The order amending Rule 3(c), Rule 9(c), Rule 10(c), Rule 11(c), Rule 12, Rule 20(d), Rule 27(d), Rule 28(j), and Rule 30(a)(1), and adopting Rule 6(c), Alabama Rules of Disciplinary Procedure, effective July 23, 2021, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.