

Alabama Rules of Disciplinary Procedure

Rule 21.

Probation.

(a) *When Probation Appropriate.* Probation is appropriate when the respondent has problems requiring supervision, but can still perform useful legal services. Probation may be an appropriate discipline in certain cases of disability, if the condition is temporary or minor and capable of treatment without transfer to disability inactive status. Probation should be used only in those cases where there is little likelihood that the respondent will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised.

(b) *Conditions.* The order placing a lawyer on probation shall specify the conditions of probation. The conditions shall take into consideration the nature and circumstances of the lawyer's misconduct and the history, character, and health status of the lawyer, and shall include as a condition that the lawyer commit no further violations of the Alabama Rules of Professional Conduct. The conditions may include, but are not limited to, the following, where appropriate:

(1) Making periodic reports as directed by the Disciplinary Commission, the Disciplinary Board, the Disciplinary Hearing Officer, or the Office of General Counsel;

(2) Monitoring of the lawyer's practice or accounting procedures;

(3) Establishing a relationship with an attorney-mentor, and regularly reporting with respect to the development of that relationship;

(4) Completing a specified a course of study;

(5) Retaking and passing all of, or any portion of, the bar examination;

(6) Refunding and/or making restitution;

(7) Submitting to medical evaluation and/or treatment;

(8) Submitting to mental-health evaluation and/or treatment;

(9) Submitting to evaluation or treatment in a program that specializes in treating disorders related to sexual misconduct;

(10) Submitting to evaluation or treatment in a program that specializes in treating matters relating to family violence, including, but not limited to, violence inflicted on a domestic partner, an elder, or a child;

(11) Submitting to substance-abuse evaluation and/or treatment; or

(12) Abstaining from alcohol and/or drugs.

(c) *Costs.* The lawyer shall be responsible for all costs of evaluation, treatment, and supervision. Failure to pay these costs before probation is terminated shall constitute a violation of probation.

(d) *Monitoring.* The Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board shall monitor the attorney's compliance with the conditions of probation imposed under these Rules. When appropriate, the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board may delegate the monitoring role to a responsible lawyer or mentor. In cases in which monitoring is so delegated, the designated monitor shall submit such reports the Office of General Counsel requests.

(e) *Violation.* If, during the probationary period, the Office of General Counsel, the Disciplinary Board, or the Disciplinary Commission receives information that a condition of probation may have been violated, the Office of General Counsel may file a motion specifying the alleged violation and seeking an order requiring the respondent to show cause why probation should not be revoked. The filing of such a motion shall toll any period of probation until final action is taken on the motion. A hearing shall be held on motion of either party before the Disciplinary Board or the Disciplinary Commission. At the hearing, the Office of General Counsel has the burden of establishing, by a preponderance of the evidence, the violation of a condition of probation. In a revocation hearing, when the alleged violation of a condition is the respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima facie evidence of a violation. Any evidence having probative value shall be admissible, regardless of its admissibility under the Alabama Rules of Evidence, provided that the respondent is accorded a fair opportunity to rebut that evidence. At the conclusion of a hearing, the Disciplinary Hearing Officer or chair of the Disciplinary Commission shall prepare a report setting forth findings of fact and the decision.

(f) *Termination.* Unless otherwise provided in the order of probation, within thirty (30) days and not less than fifteen (15) days prior to the expiration of the period of probation, the respondent shall file an affidavit with the Disciplinary Clerk and serve a copy of the affidavit on the Office of General Counsel, stating that he or she has complied with all terms of probation. Upon receipt of this notice and absent objection from the Office of General Counsel, the Disciplinary Board or the Disciplinary Commission shall forthwith issue an order showing that the probation was successfully completed. The order shall become effective upon the expiration of the period of probation, unless otherwise stated therein.

(g) *Independent Charges.* A motion for revocation of a respondent's probation shall not preclude the Office of General Counsel, the Disciplinary Commission, or the

Disciplinary Board from filing independent disciplinary charges based on the same conduct as alleged in the motion.

(h) *Prerogatives of the General Counsel.* With respect to probation, the General Counsel may investigate to determine whether the probation should be terminated, revoked, or extended. The General Counsel may recommend to the Disciplinary Commission or to the Disciplinary Board that the probation be terminated; that the probation be revoked; that the probation be extended; or that other discipline be imposed.

(i) *Trust Account.* An order of probation that restricts the lawyer from maintaining a trust account, when served on any bank maintaining a trust account against which the lawyer may make withdrawals, shall prevent the bank from making further payments from that account.

[Amended eff. 8-1-2000; Amended 9-12-2008, eff. 10-6-2008.]

Note from the reporter of decisions: The order amending Rule 21, 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.