

Alabama Rules of Disciplinary Procedure

Rule 4.

The Disciplinary Board of the Alabama State Bar.

(a) Establishment and Membership of the Disciplinary Board; Terms of Members.

(1) The Board of Commissioners of the Alabama State Bar shall appoint five panels of five members each, each panel to be known as "The Disciplinary Board of the Alabama State Bar" (hereinafter referred to as a "Disciplinary Board"). The Supreme Court of Alabama shall be notified immediately of appointments made by the Board of Commissioners of the Alabama State Bar to the Disciplinary Board and may, within thirty days of receiving notice, overrule any such appointment. Each panel shall be composed of three persons who are members in good standing of the Alabama State Bar, one layperson, and the Disciplinary Hearing Officer appointed pursuant to Rule 4.2 of these Rules. As used in these Rules, the term "Disciplinary Board" shall refer to that panel involved in a particular disciplinary proceeding, and the term "layperson" shall mean an adult resident citizen of the State of Alabama who is not now, and who never has been, a lawyer. Those members in good standing of the Alabama State Bar appointed to the Disciplinary Board shall be appointed for terms of three years, except when appointed to fill an unexpired term, and they cannot serve more than two consecutive full terms. Layperson members shall be appointed for terms of two years and may serve unlimited successive terms. Any member appointed to a Disciplinary Board shall be required to attend a three-hour training session conducted by the Office of General Counsel of the Alabama State Bar. Members who are lawyers will receive CLE credit for attending the training session.

(2) The Disciplinary Hearing Officer appointed pursuant to Rule 4.2 of these Rules and assigned to hear a particular matter may appoint members of other Disciplinary Boards or members of the Board of Bar Commissioners who are not members of the Disciplinary Commission to sit temporarily on a Disciplinary Board. The Supreme Court of Alabama shall be notified immediately of appointments made by the Disciplinary Hearing Officer to a Disciplinary Board and may, within thirty days of receiving notice, overrule any such appointment. The Disciplinary Hearing Officer may make such a temporary appointment to ensure that a quorum of the Disciplinary Board is available to hear or to consider a particular

matter, but the Disciplinary Hearing Officer's authority to appoint temporary members of the Disciplinary Board is not restricted to appointment of that number of members as may be necessary to secure a quorum, and the Disciplinary Hearing Officer may appoint as many temporary members as the Disciplinary Hearing Officer deems appropriate, up to the number required to provide a full panel of five members.

(3) Whenever a layperson member of a Disciplinary Board is not present for the hearing of a particular matter, the Disciplinary Hearing Officer shall appoint another layperson from the "lay list" provided for pursuant to subsection (c); that layperson so appointed shall serve as the Disciplinary Board's layperson member for the hearing of the particular matter. A Disciplinary Board must include one layperson member for each proceeding.

(b) Powers of the Disciplinary Board and the Disciplinary Hearing Officer.

(1) Each Disciplinary Board shall exercise the powers conferred upon it and shall perform the duties imposed upon it by these Rules or by any other rules of procedure adopted by the Board of Commissioners of the Alabama State Bar. It shall specifically have the power and duty to consider and investigate any alleged ground for discipline or any alleged disability of a lawyer that comes to its attention. It has this power and duty whether the alleged ground for discipline or the alleged disability comes to its attention by its own motion or comes to its attention by some other means or action. It shall have the power to take such action with respect to an alleged ground for discipline or an alleged disability as shall be appropriate to effectuate the purposes of these Rules.

(2) As to a proceeding before the Disciplinary Board, the Disciplinary Hearing Officer assigned to hear the matter shall have those powers and duties enumerated in Rule 4.2(b)(5) of these Rules.

(3) For purposes of determinations to be made pursuant to the Supreme Court's "Attorney Calendar Conflict Resolution Order," a lawyer member of the Disciplinary Board and a Disciplinary Hearing Officer shall, when the Disciplinary Board is conducting a hearing, be deemed to be an attorney engaged in a trial.

(c) Selection of Lay Members. Each member of the Board of Bar Commissioners may select one layperson (as defined in Rule 4(a)(1)) residing in his or her circuit to be eligible for appointment as a lay member of a Disciplinary Board. The names of those laypersons selected shall be placed on a list to be known as the "lay list." The Board of Bar Commissioners shall select ten persons whose names appear on the lay list; the Board of Bar Commissioners shall appoint five of those ten persons to be members of the Disciplinary Boards (one layperson per Board); these five persons shall serve as Disciplinary Board members for the ensuing year and each of the remaining five laypersons shall serve as an alternate, subject to appointment as a layperson member of a Disciplinary Board in the event the regular layperson member of a panel is not available to participate in a particular matter before the panel (see Rule 4(a)(3)). The Supreme Court of Alabama shall be notified immediately of the Board of Bar Commissioners' selection of the ten persons whose names appear on the lay list and may, within thirty days of receiving notice, overrule any or all of the persons selected. Each person whose name appears on the lay list shall be subject to all rules, orders, and requirements of confidentiality that the lawyer members of the Disciplinary Board are subject to.

(d) Establishment of Quorum; Majority Required for Disciplinary Board to Act. Three members shall constitute a quorum, provided, however, that the quorum must include a lay member. A panel shall act only with the concurrence of a majority of its five members, notwithstanding that fewer than all members are present to conduct the proceeding.

(e) Recusal From Proceedings. Disciplinary Board members and Disciplinary Hearing Officers shall recuse themselves from any proceeding in which a judge, similarly situated, would be required to recuse himself or herself.

(f) Reimbursement of Expenses; No Compensation for Services. Members of a Disciplinary Board shall receive no compensation for their services but may be reimbursed for their travel and for other actual and necessary expenses incidental to the performance of their duties as members of the Disciplinary Board.

(g) Adoption of Rules. The Board of Commissioners of the Alabama State Bar may adopt additional rules of procedure applicable to the Disciplinary Board.

[Amended 10-14-94, eff. 1-1-95; Amended eff. 6-1-99; Amended eff. 8-1-2000; Amended eff. 10-30-2000; Amended 9-12-2008, eff. 10-6-2008; Amended eff. 10-29-2014; Amended eff. 1-5-2023.]

Court Comment

The order adopting this rule is published in that volume of *Alabama Reporter* that contains Alabama cases from 727 So.2d.

Note from the reporter of decisions: The order amending Rule 4, 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(a)(1), 4(a)(2), and 4(d), effective October 30, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 776 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 4(a)(1), Rule 4.2(a)(1), and Rule 4.2(a)(4), effective October 29, 2014, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.

Note from the reporter of decisions: The order amending Rule 4, Rule 4.2 and Rule 5, Alabama Rules of Disciplinary Procedure, effective January 5, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.