

Alabama Rules of Disciplinary Procedure

Rule 4.2.

The disciplinary hearing officer of the Alabama State Bar.

(a) Appointment, Qualifications, Training, Compensation, and Terms.

(1) APPOINTMENT AND QUALIFICATIONS. The Board of Bar Commissioners of the Alabama State Bar shall appoint a pool of three (3) qualified lawyers to serve as Disciplinary Hearing Officers. Those appointed shall have been members in good standing of the Alabama State Bar for a period of twelve (12) years and shall have had no prior discipline imposed by the Alabama State Bar or by any other jurisdiction in which they have been admitted to practice law. Appointments shall be made from a list compiled by the Executive Secretary of the Alabama State Bar from nominations received from the Executive Council of the Alabama State Bar. The names of those appointed shall be placed on a list maintained by the Disciplinary Clerk of the Alabama State Bar.

(2) TRAINING. Training for Disciplinary Hearing Officers is required, subject to the terms of this rule. Disciplinary Hearing Officers shall attend one Disciplinary Hearing Officer training session within 12 months after their appointment. The training shall consist of a minimum of a six-hour session conducted by the Alabama State Bar with input from the Alabama Judicial College, the Office of General Counsel of the Alabama State Bar, and the Supreme Court of Alabama. Disciplinary Hearing Officers who fail to attend the minimum training session shall be removed from consideration for appointment in future cases. However, failure to attend the minimum training session shall not be the basis for the disqualification of any Disciplinary Hearing Officer.

(3) COMPENSATION. Disciplinary Hearing Officers shall receive no compensation for their services but they may be reimbursed for their travel and for other actual and necessary expenses incidental to the performance of their duties as Disciplinary Hearing Officers.

(4) TERMS. Disciplinary Hearing Officers shall be appointed for terms of two years, except when appointed to fill an unexpired term, and they cannot serve more than two full consecutive terms.

(b) Powers and Duties. In accordance with these Rules, a duly appointed Disciplinary Hearing Officer shall have the following powers and duties:

(1) To exercise general supervision over disciplinary proceedings assigned to a Disciplinary Board, and to perform all duties necessary to carry out these Rules or any other rules of procedure adopted by the Board of Bar Commissioners of the Alabama State Bar.

(2) To pass on all questions concerning the sufficiency of formal charges filed with the Disciplinary Board.

(3) To conduct pretrial negotiations between the Alabama State Bar and a respondent attorney and/or the respondent's counsel.

(4) To grant continuances and to extend any time limit provided herein as to any matter pending before him or her.

(5) As to a proceeding before the Disciplinary Board, to conduct all preliminary matters, to rule on all matters of evidence, to vote as a member of the panel on all matters before the panel, and generally to guide and superintend the conduct of the proceeding. For purposes of all hearings and proceedings, the Disciplinary Hearing Officer shall have the power and immunity of a circuit judge and the Alabama Rules of Civil Procedure and Alabama Rules of Evidence, as applicable to nonjury trials in the circuit court, shall apply, except to the extent that these Rules may provide otherwise.

(6) The Disciplinary Hearing Officer shall make written findings of fact and conclusions of law as directed by the Disciplinary Board, which shall be captioned "Report and Order." The decision of the Disciplinary Board may be announced immediately after the conclusion of the proceedings. In such cases, if possible, the "Report and Order" should be drafted and circulated as provided in subparagraph 4.2(b)(6)(A) at that time.

(A) After the conclusion of a hearing before a Disciplinary Board, the Disciplinary Hearing Officer shall circulate a copy of the Report and Order among the Disciplinary Board members present for the hearing for their approval.

(B) After circulation of the Report and Order, the Disciplinary Board members shall notify the Disciplinary Hearing Officer of any suggested changes to the Report and Order and/or of their approval of the Report and Order. When the Report and Order is approved by a majority of the Disciplinary Board members, the Report and Order shall be filed with the Disciplinary Clerk.

(C) The Report and Order shall contain:

(i) A finding of fact and conclusion of law as to each allegation of misconduct, which, upon acceptance by the Disciplinary Board, shall enjoy the same presumption of correctness as the judgment of a trier of fact in a nonjury civil proceeding in which evidence has been presented ore tenus;

(ii) A finding as to whether the respondent attorney is guilty or not guilty of the misconduct charged;

(iii) A finding as to the discipline to be imposed, with reference, where appropriate, to the Alabama Standards for Imposing Lawyer Discipline;

(iv) A statement of what, if any, mitigating and aggravating factors were considered in imposing the discipline, as referenced in Standard 9.0, Alabama Standards for Imposing Lawyer Discipline; and

(v) A statement of whether restitution was requested, and, if requested, whether it was granted, and, if granted, a statement of the amount requested and the amount granted. Restitution shall be payable as directed by the Disciplinary Board and shall constitute a judgment for which execution may issue; and

(vi) A proposed order accepting and approving the Report and Order, which shall, upon acceptance by a majority of the Disciplinary Board members present for the hearing, be executed and filed by the Disciplinary Clerk and served upon all parties of record.

[Added eff. 8-1-2000; Amended eff. 10-30-2000; Amended 9-12-2008, eff. 10-6-2008; Amended eff. 10-29-2014; Amended eff. 8-16-2017.]

Note from the reporter of decisions: The order adopting Rule 4.2, 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 4.2(b)(5), 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 148 So. 3d.

Note from the reporter of decisions: The order amending Rule 4.2(b)(6) and Rule 28(c), Ala. R. Disc. P., effective August 16, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d