



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

ORDER

IT IS ORDERED that Rule 4, Rule 4.2, and Rule 5, Alabama Rules of Disciplinary Procedure, be amended to read in accordance with Appendices A, B, and C, respectively, to this order;

IT IS FURTHER ORDERED that Rule 4.1, Alabama Rules of Disciplinary Procedure, is hereby rescinded;

IT IS FURTHER ORDERED that the amendments to Rule 4, Rule 4.2, and Rule 5 and the rescission of Rule 4.1 are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 4, Rule 4.2, and Rule 5:

"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."

IT IS FURTHER ORDERED that the following note from the reporter of decisions be inserted in place of Rule 4.1:

"Note from the reporter of decisions: The order rescinding Rule 4.1, Alabama Rules of Disciplinary Procedure, effective January 5, 2023, is published in that volume of Alabama Reporter that contains Alabama cases from __ So. 3d."



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers,
Mendheim, Stewart, and Mitchell, JJ., concur.

Witness my hand and seal this 5th day of January, 2023.

Megan B. Rhodelsek

Clerk of Court,
Supreme Court of Alabama

FILED
January 5, 2023
Clerk of Court
Supreme Court of Alabama



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

APPENDIX A

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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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.



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

APPENDIX B

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 five qualified lawyers to serve as Disciplinary Hearing Officers. The Supreme Court of Alabama shall be notified immediately of the appointment of lawyers to serve as Disciplinary Hearing Officers by the Board of Commissioners of the Alabama State Bar and may, within thirty days of receiving notice, overrule any such appointment. Those appointed shall have been members in good standing of the Alabama State Bar for a period of twelve 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 twelve 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,



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

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;

(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



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

executed and filed by the Disciplinary
Clerk and served upon all parties of
record.



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

APPENDIX C

Rule 5. The Disciplinary Commission of the Alabama State Bar

(a) Establishment and Membership of the Disciplinary Commission. The Board of Commissioners of the Alabama State Bar shall appoint from among the members in good standing of the Alabama State Bar six members to be the Disciplinary Commission, none of whom shall be a member of the 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 Commission and may, within thirty days of receiving notice, overrule any such appointment. A member shall be appointed for a term of three years, except when appointed to fill an unexpired term. A member cannot serve more than two successive terms. The Board of Commissioners of the Alabama State Bar shall appoint a chair of the Disciplinary Commission for a term not to exceed five years. The chair shall assist and advise the members of the Disciplinary Commission on individual disciplinary matters, but shall vote only in the event of a tie. The chair has the power and authority to approve the agenda of the Disciplinary Commission, to establish meeting dates, to vote on all policy or procedural matters of the Disciplinary Commission, and to participate in the disciplinary process of the Alabama State Bar. The chair may be reappointed for an additional term not to exceed five years.

(b) Powers of the Commission. Members of the Commission shall exercise the powers and perform the duties conferred and imposed upon them by these Rules and by the rules of procedure adopted by the Board of Commissioners of the Alabama State Bar.

(c) Establishment of a Quorum. Three members shall constitute a quorum. The Commission shall act only with the concurrence of a majority of the Commission, which shall be not less than three members.

(d) Recusal From Proceedings. Commission members shall recuse themselves from any proceeding in which a judge, similarly situated, would be required to recuse himself or herself. If more than one member



IN THE SUPREME COURT OF ALABAMA

January 5, 2023

recuses himself or herself in a particular proceeding, the President of the Alabama State Bar may appoint alternate members for that proceeding only. The Supreme Court of Alabama shall be notified immediately of appointments made by the President of the Alabama State Bar to the Disciplinary Commission and may, within thirty days of receiving notice, overrule any such appointment.

(e) Reimbursement of Expense. Commission members shall receive no compensation for their services but may be reimbursed for their travel and other actual and necessary expenses incidental to the performance of their duties.

(f) Adoption of Rules. The Board of Commissioners of the Alabama State Bar may adopt rules of procedure applicable to the Disciplinary Commission, which are consistent with these Rules.