

IN THE SUPREME COURT OF THE
STATE OF ALABAMA

PETITION TO AMEND THE ALABAMA RULES
OF DISCIPLINARY PROCEDURE

Comes now the Board of Bar Commissioners of the Alabama State Bar, by and through the Office of General, and petitions this Honorable Court to adopt the proposed rules changes to the Alabama Rules of Disciplinary Procedure, as submitted herewith and attached hereto as Appendix "B".

The Office of General Counsel would submit that these changes are appropriate at this time in view of developments within the disciplinary processes of the Alabama State Bar which would justify the proposed changes. Some of the more substantive changes would be decreasing the number of Disciplinary Board Panels which conduct disciplinary hearings, and the elimination of the Board of Disciplinary Appeals.

As a practical matter, the number of cases which actually go to a hearing before a Disciplinary Board have decreased in number. Also, the Board of Disciplinary Appeals was created primarily at the suggestion of the Court at a time when disciplinary cases were appealed directly to the Supreme Court of Alabama. A direct appeal was allowed under the previous provisions of the Alabama Rules of Disciplinary Procedure. In certain of those appealed cases, disciplinary issues were raised for the first time on appeal to the Supreme Court. The Supreme Court, at the time of the creation of the Board of Disciplinary Appeals, wanted the process to allow the Bar to have a second opportunity to address a disciplinary matter following a determination of guilt by the Disciplinary Board, and to also ensure that all issues had been raised at some level with the Bar before being presented to the Alabama Supreme Court.

Other prior changes to the Alabama Rules of Disciplinary Procedure required the creation of the

Disciplinary Hearing Officer, who presides over hearings conducted by the Disciplinary Board. Those rules changes also required the Disciplinary Hearing Officer, following a hearing, to enter an order which included detailed findings of fact, and application of the standards for imposing lawyer discipline where a lawyer was found guilty of having violated a rule of professional conduct. Such had not been the case prior to the creation of the Board of Disciplinary Appeals, and the previous changes to the Alabama Rules of Disciplinary Procedure.

In recent years, these detailed orders of the Disciplinary Hearing Officer have provided a truly substantive basis for appellate review. For that reason, issues are no longer presented to the Supreme Court on a first time basis. Rather, those issues are required to be presented to the Disciplinary Board and addressed at that level. Thus, the need and purpose of the Board of Disciplinary Appeals, as envisioned prior to previous rules changes, no longer exist.

WHEREFORE, the Alabama State Bar would respectfully request that this Honorable Court adopt the proposed changes to the Alabama Rules of Disciplinary Procedure as attached hereto as Appendix "B".

Respectfully submitted on this _____ day of October, 2007.

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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 ~~six~~ three panels of ~~six~~ five members each, each panel to be known as "The Disciplinary Board of the Alabama State Bar" (hereinafter referred to as a "Disciplinary Board"). Each panel shall be composed of ~~four~~ three persons who are Bar commissioners, 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 Bar commissioners 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 one year 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 at Alabama State Bar Headquarters. 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 the Board of Bar Commissioners who are not members of the Disciplinary Commission to sit temporarily on a Disciplinary Board. 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 ~~six~~ five members. A roster shall be made of the names of the Bar commissioners who are not members of the Disciplinary Board or Disciplinary Commission, and these temporary appointments shall be made from that roster.

(3) Whenever a Disciplinary Board's layperson member 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 shall 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, at its annual meeting, select ~~twelve (12)~~ nine (9) persons whose names appear on the lay list; the Board of Bar Commissioners shall appoint ~~six (6)~~ three (3) of those ~~twelve (12)~~ nine (9) persons to be members of the Disciplinary Boards (one layperson per Board); these ~~six (6)~~ three persons shall serve as Disciplinary Board members for the ensuing year and each of the remaining six (6) 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)). 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, ~~and they shall take a proper oath.~~

(d) Establishment of Quorum; Majority Required for Disciplinary Board to Act. ~~Four~~ 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 ~~six~~ 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 effective January 1, 1995; June 1, 1999; August 1, 2000; October 30, 2000.]

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.

**RULE 4.1. THE DISCIPLINARY BOARD OF THE ALABAMA STATE
BAR—TRANSITIONAL PROVISION FOR SELECTION OF LAY MEMBERS**

As soon as practicable after the effective date of the amendments to this rule, and in no event later than the beginning of the 1995 annual meeting of the Alabama Bar Association, the Board of Bar Commissioners shall select persons to serve as lay members of the Disciplinary Board for an interim term beginning on the day of appointment and ending on the final day of the 1995 annual meeting. The persons so appointed may be reappointed. Until lay members of the Disciplinary Board are appointed, the Disciplinary Board shall be composed of five persons who are Bar commissioners Disciplinary Board Panels I, II, and III, as constituted on the effective date of this rule shall be automatically re-appointed as Disciplinary Hearing Officer, Disciplinary Board Member, and Lay Member, except the bar commissioner last appointed to each panel whose appointment shall be deemed to expire so that the panels shall be composed of only five members. Those re-appointed by operation of this rule shall be deemed appointed for an initial term for purposes of succession. The remaining Disciplinary Board panels, Panels IV, V, and VI and appointments and terms for Disciplinary Board members, Disciplinary Hearing Officers, and lay members serving in such capacity shall be dissolved and terminate upon the effective date of these amendments.

[Adopted effective January 1, 1995.]

Court Comment

Amendments to Rule 4 effective January 1, 1995, provide for laypersons to be appointed to the Disciplinary Board. Rule 4(c) provides for lay members to be selected by the Board of Bar Commissioners at its annual meeting. The annual meeting is held in July. This transitional rule permits the Board of Bar Commissioners to implement the new provisions before its 1995 annual meeting.

**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 ~~six (6)~~ 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 not less than ten (10) 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 three 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) W filed with the Disciplinary Clerk within seven (7) days 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 and shall file with the Disciplinary Clerk of the Alabama State Bar a notice that the Report and Order has been served on those Disciplinary Board members.~~

~~——(B) Within seven (7) days of service 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. The Report and Order may be accepted and filed at any time within the foregoing time periods and thereupon become a final order for purposes of appeal at the time of filing. The failure to file the Report and Order within the time provided by this rule shall not be a ground for reversal of the findings or of the discipline imposed.~~

~~——(C) (7) 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.~~

[Adopted effective August 1, 2000; amended effective October 30, 2000.]

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.

**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 their number four members to be the Disciplinary Commission, none of whom shall be a member of the Disciplinary Board, ~~Board of Disciplinary Appeals, or Prediscipline Diversion Board.~~ A member shall be appointed for a term of three years, except 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 not vote in such matters. 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. Two 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 two 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 recuses himself or herself in a particular proceeding, the President of the Alabama State Bar may appoint alternate members for that proceeding only.

(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.

[Amended effective October 9, 1991; August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 5, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

~~RULE 5.1. THE BOARD OF DISCIPLINARY APPEALS
OF THE ALABAMA STATE BAR~~

~~—— (a) Establishment and Membership of the Board;
Officers; Quorum; and Compensation.~~

~~—— (1) Establishment and Membership of the Board of
Disciplinary Appeals. The Board of Disciplinary
Appeals of the Alabama State Bar shall be composed of
five (5) lawyers, each of whom shall have at least
fifteen (15) years experience in the practice of law in
the State of Alabama, shall be a member of the Alabama
State Bar in good standing, shall have no prior
discipline, and shall not be a member of the Board of
Bar Commissioners or a local grievance committee at the
time of appointment. Its members shall be appointed by
the Board of Bar Commissioners of the Alabama State
Bar. Members 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. Terms shall be staggered to provide, so far as
possible, for the expiration each year of the terms of
an equal number of members. (In furtherance of this
goal, the initial appointments shall be made as
follows: places numbered one, two, and three shall be
appointed for terms of one, two, and three years,
respectively. Places numbered four and five shall be
appointed for terms of one and two years, respectively.
Upon the expiration of these initial terms, the
successor appointees shall serve full three year terms.
These initial appointments shall be considered
unexpired terms for purposes of reappointment and
limitations on the number of terms.) Persons appointed
shall serve at the pleasure of the Board of Bar
Commissioners and may be dismissed from service at any
time by action of that Board. In the event of a
vacancy during an unexpired term, the Board of Bar
Commissioners shall appoint a lawyer who meets the
qualifications set out in this rule to fill the
unexpired term.~~

~~—— (2) Officers. The members of the Board of
Disciplinary Appeals shall elect from among their
membership one chair and one vice chair. The chair~~

~~shall exercise overall supervisory control of the appellate functions of the Board of Disciplinary Appeals. The vice chair shall assist the chair and shall serve as chair in the absence of the chair.~~

~~—— (3) *Establishment of a Quorum.* Three members shall constitute a quorum; the Board shall act only with the concurrence of a majority of its five members, notwithstanding that fewer than all members are present for a proceeding.~~

~~—— (4) *Compensation.* Members of the Board of Disciplinary Appeals 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 official duties.~~

~~—— **(b) Powers and Duties of the Board of Disciplinary Appeals.** The Board of Disciplinary Appeals shall have plenary powers of appellate review of decisions of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar, as provided in subsection (d).~~

~~—— **(c) Recusal of Disciplinary Board Appeals Members.** Members of the Board of Disciplinary Appeals shall recuse themselves from any proceeding in which a judge, similarly situated, would be required to recuse himself or herself.~~

~~—— **(d) Scope and Standard of Review.** All proceedings filed with the Board of Disciplinary Appeals shall be conducted as herein provided. When proceedings before the Board of Disciplinary Appeals are conducted, the Board of Disciplinary Appeals shall affirm the decision under review unless it determines that, based on the record as a whole, the findings of fact are clearly erroneous or that the form or extent of discipline imposed, when considered under the Alabama Standards for Imposing Lawyer Discipline, (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs and protection of the public, the profession, or the administration of justice, or (3) is arbitrary and capricious. No error shall be predicated on any ground not presented to the~~

~~Disciplinary Board or the Disciplinary Commission. In affirming, reversing, or modifying a decision or order, the Board of Disciplinary Appeals shall specifically state the reason(s) for its conclusion(s) and the legal basis on which it relies.~~

~~——— **(e) Appeal How Taken.** An appeal from a final order of a Disciplinary Board or the Disciplinary Commission of the Alabama State Bar to the Board of Disciplinary Appeals shall be taken by filing a notice of appeal with the Disciplinary Clerk within the time set forth in this Rule. Upon the filing of a notice of appeal, the Board of Disciplinary Appeals shall have original jurisdiction over the appeal and the procedures concerning the appeal unless otherwise specified by these Rules. A copy of the notice of appeal shall be served on the Disciplinary Hearing Officer or the Chairman of the Disciplinary Commission.~~

~~——— **(f) Appeal When Taken.** The notice of appeal shall be filed with Disciplinary Clerk of the Alabama State Bar within fourteen (14) days of the date of the filing of the final order of the Disciplinary Board or the Disciplinary Commission being appealed from. The filing of notice of appeal is jurisdictional, and the failure to timely file will result in dismissal of the appeal without further notice and will preclude further review by the Supreme Court of Alabama. The record on appeal shall be prepared, filed, and transmitted to the Board of Disciplinary Appeals by the Disciplinary Clerk in accordance with the provisions of Rule 12(f).~~

~~——— **(g) General Provisions.** Except as otherwise provided in these Rules, and to the extent practical, appeals shall be conducted in conformity with the Alabama Rules of Appellate Procedure.~~

~~——— **(h) Appeal of Decision of Board of Disciplinary Appeals.** The decision of the Board of Disciplinary Appeals is final upon the entry of an order by the Board, unless a party files notice of appeal within fourteen (14) days of the issuance of the order with the Disciplinary Clerk and the Clerk of the Supreme Court of Alabama as provided by Rule 12(g). A petition~~

~~for rehearing by the Board of Disciplinary Appeals will not be considered.~~

~~[Adopted effective August 1, 2000.]~~

~~———— **Note from the reporter of decisions:** The order adopting Rule 5.1, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.~~

RULE 8. TYPES OF DISCIPLINE

(a) Disbarment. Disbarment terminates the individual's status as a lawyer and may result from a hearing or by consent as provided in Rule 23. A person who has been disbarred may not apply for reinstatement until the expiration of at least five (5) years from the effective date of disbarment. A lawyer who has been disbarred after reinstatement following a prior disbarment shall not be reinstated.

(b) Suspension. Suspension is the removal of a lawyer from the practice of law for a specified period of time not less than forty-five (45) days and not more than five (5) years, unless the suspension is conditioned upon the satisfaction of some condition, such as restitution of client funds, in which case the suspension shall continue until the condition is satisfied. Suspension may result from a hearing or by consent as provided in Rule 24. A lawyer who has been suspended for ninety (90) days or less will be automatically reinstated upon expiration of the period of suspension and the filing of an affidavit that he or she has complied with all applicable discipline or disability orders and rules. A lawyer who has been suspended for more than ninety (90) days must apply for reinstatement pursuant to Rule 28, unless the order of suspension expressly provides otherwise.

(c) Interim Suspension.

(1) Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. The Disciplinary Commission may, pursuant to Rule 20 of these Rules, place a lawyer on interim suspension immediately upon proof that the lawyer has been convicted of a "serious crime" or that the lawyer's continuing conduct is causing or is likely to cause immediate and serious injury to a client or to the public.

(2) A "serious crime" is defined as:

(A) A felony;

(B) A lesser crime involving moral turpitude;

(C) A lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or

(D) An attempt, a conspiracy, or the solicitation of another to commit a "serious crime."

(d) Indefinite Suspension. A lawyer may be suspended indefinitely from the practice of law for failing to comply with the Client Security Fund Rules, the Mandatory Continuing Legal Education Rules, and the Interest on Lawyer Trust Account Rules of the Alabama State Bar.

(e) Summary Suspension. A member who fails to pay any assessment, costs, or restitution as ordered by the Alabama Supreme Court, the Disciplinary Commission, or the Disciplinary Board, ~~or the Board of Disciplinary Appeals~~ within 30 days following entry of the judgment or order or a later time as fixed in the judgment or order, or who fails to participate in formal proceedings or to respond to requests for information concerning a disciplinary matter shall be summarily suspended upon order of the Disciplinary Commission of the Alabama State Bar, pursuant to Rule 20 of these rules.

(f) Public Reprimand. Public reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice. The two versions of public reprimand are:

(1) A public reprimand with general publication requires, in accordance with Rule 33 of these Rules, publication in the official Bar publication and in a newspaper of general circulation in each judicial circuit in the State of Alabama in which the respondent

maintained or maintains an office for the practice of law.

(2) A public reprimand without general publication requires, in accordance with Rule 33 of these Rules, a publication in the official Bar publication to include the name of the respondent, but no publication in the newspaper is permitted. This type of public reprimand is nevertheless public and may be released upon request by any interested party.

(g) Private Reprimand. Private reprimand is a form of non-public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(h) Probation. Probation is a sanction that allows a lawyer to practice law under specified conditions and may be imposed alone or in conjunction with ~~a public reprimand (in which case the probation is public) or a private reprimand (in which case the probation is private)~~ other forms of discipline. ~~If probation is imposed without other discipline, the p~~ Probation shall be public unless otherwise ordered by the Disciplinary Commission or Disciplinary Board. ~~may be either public or private.~~ Probation may also be imposed as a condition of reinstatement.

Probation should be used only in those cases where there is little likelihood that the respondent lawyer will harm the public during the period of probation and where the conditions of the probation can be adequately supervised. Probation may be appropriate in certain cases of disability, if the condition is capable of treatment without transfer to the disability inactive status.

Probation must be imposed for a specified period, ~~not to exceed two (2) years.~~

(i) Additional Sanctions and Remedies. In conjunction with any of the above punishments, the Disciplinary Board or the Disciplinary Commission may impose any of the following sanctions and remedies:

- (1) Restitution;
- (2) Assessment of cost (not including lawyer's fees);
- (3) Limitation upon practice;
- (4) Appointment of a receiver;
- (5) Requirement that the lawyer retake and pass the State Bar examination or the professional responsibility examination, or both;
- (6) Requirement that the lawyer attend continuing legal education courses approved by the Alabama State Bar; and
- (7) Other requirements ~~that the Disciplinary Board deems~~ consistent with the purposes of lawyer discipline.

[Amended effective August 1, 2000.]

Note from the reporter of decisions: The order adopting Rule 8(e), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

~~RULE 8.1. PREDISCIPLINE DIVERSION PROGRAM~~

~~—— (a) Establishment, Membership, Qualifications, and Terms of the Prediscipline Diversion Board. The Board of Bar Commissioners of the Alabama State Bar shall appoint four lawyers and three laypersons to serve as members of a Prediscipline Diversion Board. Each of the lawyers appointed shall be a member in good standing of the Alabama State Bar for at least twelve (12) years and shall serve at the pleasure of the Board of Bar Commissioners of the Alabama State Bar. The layperson members appointed shall never have been lawyers; they shall be appointed in the same manner as layperson members are appointed to the Disciplinary Board pursuant to Rule 4(c) and shall serve at the pleasure of the Board of Bar Commissioners. No member of the Prediscipline Diversion Board may serve as a member, either regular or alternate, of the Disciplinary Board, the Disciplinary Commission, or the Board of Disciplinary Appeals of the Alabama State Bar or as a Disciplinary Hearing Officer.~~

~~—— (b) Powers and Duties. The Prediscipline Diversion Board shall have the power to make any and all necessary rules of procedure to effectuate the purposes of this rule and program, subject to approval by the Board of Bar Commissioners of the Alabama State Bar.~~

~~—— (c) Eligibility for Program. Disciplinary cases that would otherwise be disposed of by a public reprimand with general publication or a lesser sanction shall be eligible for diversion. A lawyer who has received prior discipline or who has previously participated in the diversion program shall not be eligible for diversion.~~

~~—— (d) Application for Prediscipline Diversion. A respondent who chooses to avail himself or herself of the Prediscipline Diversion Program shall submit an application with the Prediscipline Diversion Board for acceptance into the Prediscipline Diversion Program. The application shall include:~~

~~—— (1) An unqualified guilty plea to the violation(s) of the Alabama Rules of Professional Conduct as charged;~~

~~—— (2) A narrative of the respondent's conduct and the circumstances giving rise to the violation(s) of the Alabama Rules of Professional Conduct;~~

~~—— (3) The respondent's biographical and professional history;~~

~~—— (4) An explanation by the respondent as to why acceptance in the Prediscipline Diversion Program is appropriate; and~~

~~—— (5) A recommendation from the Office of General Counsel, the Disciplinary Commission, and/or the Disciplinary Board of the Alabama State Bar that the respondent be accepted into the Prediscipline Diversion Program.~~

~~—— **(e) Approval of Diversion.** Participation in the Prediscipline Diversion Program shall be in the discretion of the Prediscipline Diversion Board, but in no event shall a respondent be allowed to participate over the objection of the Office of General Counsel, the Disciplinary Board, or the Disciplinary Commission of the Alabama State Bar. Diversion shall not be granted without the respondent's personal appearance and an interview before the Prediscipline Diversion Board.~~

~~—— **(f) Effect of Rejection of Diversion.** If the Prediscipline Diversion Board rejects a respondent's application to participate in the Prediscipline Diversion program, the respondent's unqualified plea of guilty shall remain in effect, and the matter shall proceed for a hearing to determine appropriate discipline as provided in these Rules.~~

~~—— **(g) Diversion Agreement.** Upon the respondent's acceptance into the Prediscipline Diversion Program, the terms of the diversion shall be set forth in a written agreement. The agreement, which shall be~~

~~between the respondent and the Prediscipline Diversion Board, shall incorporate the respondent's application for diversion and shall contain conditions similar to those of probation as provided in Rule 21, and shall be monitored by the Prediscipline Diversion Board in a manner consistent with these Rules.~~

~~——— **(h) Costs of Diversion.** The respondent shall pay all costs incurred in connection with participation in the Prediscipline Diversion Program. Payment of these costs shall be a condition of release from the Prediscipline Diversion Program.~~

~~——— **(i) Effect of Diversion.** When the respondent's application for diversion is approved and the diversion agreement is executed, the underlying matter shall be placed in abeyance, indicating that the respondent is participating in the diversion program. Diversion shall not constitute a form of discipline and shall be considered private and confidential.~~

~~——— **(j) Term of Diversion.** A diversion program must be completed within two years of the date on which the diversion agreement is executed by all parties. Failure to complete the terms of the diversion agreement within the time allowed shall constitute a violation of the diversion agreement.~~

~~——— **(k) Effect of Successful Completion of the Prediscipline Diversion Program.** Within 30 days of completion of all the requirements of the Prediscipline Diversion Program, the respondent shall file with the Prediscipline Diversion Board an affidavit stating that he or she has fulfilled all the conditions of the diversion agreement. The respondent shall appear before the Prediscipline Diversion Board before the diversion program is completed. If the Board is satisfied that the respondent has successfully completed the diversion program, it shall issue an order of successful completion, and the disciplinary matter shall be dismissed as diverted. This matter shall remain private and confidential and shall be treated for public information purposes as no prior discipline. In the event the respondent is found~~

~~guilty of misconduct occurring after the date he or she is accepted into the Prediscipline Diversion Program, the dismissal as diverted may be considered as a prior disciplinary offense in imposing discipline for subsequent misconduct.~~

~~—— (1) Breach of Diversion Agreement. — If the Office of General Counsel, the Disciplinary Board, or the Disciplinary Commission has reason to believe that the respondent has breached the diversion agreement, a notice informing the respondent of the alleged breach shall be served upon the respondent and filed with the Prediscipline Diversion Board. The Prediscipline Diversion Board shall enter an order requiring the respondent to appear and to show cause, if there is any, as to why the Prediscipline Diversion Board should not enter a finding that the respondent has breached the diversion agreement. Upon a finding that the respondent has breached the diversion agreement, the Prediscipline Diversion Board shall enter an order so stating, and the matter shall be referred to the Disciplinary Board for a hearing to determine discipline based upon the respondent's previously entered plea of guilty. The finding that the respondent has breached the diversion agreement shall not be subject to review and shall be considered by the Disciplinary Board as an aggravating factor in imposing discipline.~~

~~{Adopted effective August 1, 2000.}~~

~~—— Note from the reporter of decisions: — The order adopting Rule 8.1, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.~~

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, or by a local grievance committee, as provided in paragraph (b) of this rule. A recommendation based upon such investigation shall be submitted to, and acted upon by, the Disciplinary Commission, as provided in paragraph (c) 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 (d) 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 (e) of this rule. The parties shall have the right to appeal from an adverse decision, as provided in paragraphs (f) and ~~(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. The decision of the Disciplinary Commission not to pursue an inquiry ~~shall be final~~ is not an appealable order.

(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 subsection (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 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) 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.

(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.

(d) 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 Commission to reconsider the proposed discipline. If, after reconsideration, the Commission approves a private or public reprimand, the respondent may accept such sanction or demand charges, as provided in (d)(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 (c) of this rule.

(e) 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 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.

~~(f) Review by the Board of Disciplinary Appeals.~~

~~——(1) The parties have the right to appeal a decision of the Disciplinary Board or the Disciplinary Commission to the Board of Disciplinary Appeals of the Alabama State Bar by filing a notice of appeal with the Disciplinary Clerk within fourteen (14) days after the decision of the Disciplinary Board or the Disciplinary Commission.~~

~~——(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 the notice of appeal, the appellant shall order from the court reporter a transcript of the testimony and, at the time of ordering, shall make satisfactory arrangements with the reporter for payment of costs of the transcript. Within twenty eight (28) days after receiving the order for the transcript, the court reporter shall file the transcript with the Disciplinary Clerk of the Alabama State Bar.~~

~~—— (4) Within seven (7) days after the Disciplinary Clerk receives the transcript, the appellant shall make satisfactory arrangements with the Disciplinary Clerk for the payment of the costs of photocopying a sufficient number of copies of the clerk's record on appeal to furnish one copy each to the members of the Board of Disciplinary Appeals, the opposing parties, and the appellant, if the appellant desires to order a copy. The costs of copying and producing the record on appeal shall be a minimum of \$1.00 per page, or as otherwise determined from time to time by the Board of Bar Commissioners of the Alabama State Bar, payable to the Disciplinary Clerk of the Alabama State Bar prior to the filing of the record on appeal. In the event the appellant fails to make satisfactory arrangements with the Disciplinary Clerk for payment of the costs of photocopying and of producing the record on appeal, the Disciplinary Clerk shall notify the chair of the Board of Disciplinary Appeals of the deficiency in writing, seeking a determination by the Board of Disciplinary Appeals as to whether the appeal should be dismissed for failure to prosecute.~~

~~—— (5) Within fourteen (14) days after receipt of payment for the costs of photocopying and production, the Disciplinary Clerk shall forward the record on appeal to the members of the Board of Disciplinary Appeals.~~

~~——(6) The Alabama Rules of Appellate Procedure shall govern all proceedings under this rule to the extent this rule does not provide otherwise.~~

~~——(g) Review by the Supreme Court.~~

(1) The parties have a right to appeal an adverse decision of the Disciplinary Board of Disciplinary Appeals 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 decision of the Disciplinary Board of Disciplinary Appeals is filed with the Disciplinary Clerk.

(2) The record on appeal shall include: (A) ~~the record on appeal before the Board of Disciplinary Appeals, and (B) the decision of the Board of Disciplinary Appeals.~~ 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 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.

[Amended effective January 1, 1991; January 1, 1995; August 1, 2000.]

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.

RULE 15. IMMUNITY

(a) Complaints, Petitions and Testimony.

Complaints, and petitions submitted pursuant to these Rules or testimony with respect thereto shall be absolutely privileged, and no lawsuit predicated thereon may be instituted.

(b) Official Duty Immunity. Members of the following shall be immune from suit for any conduct in the course of their official duties:

(1) The Executive Committee of the Alabama State Bar;

(2) The Disciplinary Commission;

(3) The Disciplinary Board;

(4) The General Counsel and the staff of the Office of General Counsel;

(5) Local grievance committees and any executive committee or member of a local bar association while serving as a part of the local grievance process;

(6) A Bar Commissioner while participating in the grievance procedure;

(7) ~~The Board of Disciplinary Appeals;~~ A Disciplinary Hearing Officer;

(8) ~~The Prediscipline Diversion Board;~~ The Disciplinary Clerk;

(9) Any lay member of the Disciplinary Board;

(10) The Client Security Fund Committee and its members or consultants;

(11) Trustees appointed pursuant to Rule 29 of these rules and monitors or mentors appointed pursuant to Rule 21 of these rules;

(12) The Alabama State Bar Lawyer Assistance Program and any member of its staff or its agents;

(13) The Alabama State Bar Practice Management Assistance Program and any member of its staff or its agents.

(14) In addition, any financial institution reporting an overdraft of a lawyer's trust account pursuant to the provisions of Rule 1.15(e) of the Alabama Rules of Professional Conduct shall be immune from suit for any conduct in the course of its official duties in complying with Rule 1.15.

(c) Reporting of Professional Misconduct. A lawyer acting in compliance with Rule 8.3, Alabama Rules of Professional Conduct shall be immune from civil suit.

(d) Unauthorized Practice of Law. Members of the Alabama State Bar serving on the Alabama State Bar Unauthorized Practice of Law Committee or on Unauthorized Practice of Law Committees of local bar associations and members of the State Bar staff investigating unauthorized practice of law complaints, or taking action against individuals for the unauthorized practice of law, shall be immune from civil suit for any conduct in the course of their official duties.

A person submitting an unauthorized practice of law complaint to the Alabama State Bar shall be immune from civil suit.

[Amended effective October 9, 1991; August 1, 1997; August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 15(b), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

RULE 20. INTERIM SUSPENSION AND SUMMARY SUSPENSION.

(a) Grounds for Suspension-With and Without Notice.

(1) *Conviction of a Serious Crime.* The Disciplinary Commission may issue an order temporarily suspending the lawyer without written or oral notice to the lawyer on petition of the General Counsel, supported by an affidavit demonstrating facts personally known to the affiant or a verified complaint, showing that a lawyer has been convicted of a serious crime, as defined in Rule 8 of these Rules.

(2) *Other Circumstances Without Notice.* The Disciplinary Commission may issue an order temporarily suspending the lawyer without written or oral notice to the lawyer on petition of the General Counsel, only if:

(i) it clearly appears from specific facts shown by affidavit demonstrating facts personally known to the affiant or by verified complaint that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to a client or to the public, or showing that grounds for summary suspension as defined in Rule 8(e) exist, and

(ii) General Counsel certifies to the Disciplinary Commission in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Unless the Disciplinary Commission is satisfied by the showing made pursuant to subsection (ii) above that suspension without notice is warranted under the circumstances, a lawyer, other than one convicted of a serious crime, shall not be suspended without notice and an opportunity to be heard as provided in subsection 3.

3. Other Circumstances With Notice and Preliminary Hearing. The Disciplinary Commission may issue an order temporarily suspending the lawyer with written or oral notice to the lawyer on petition of the General Counsel if it clearly appears from specific facts shown by

affidavit demonstrating facts personally known to the affiant or by verified complaint that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to a client or to the public. The written or oral notice required by this subsection is notice that is reasonable under the circumstances. Reasonable notice shall be presumed if written or oral notice was attempted upon the lawyer at the address, telephone or facsimile number or e-mail address on file with the membership department of the Alabama State Bar. The Disciplinary Commission may conduct a preliminary hearing on the petition for interim suspension with 48 hours notice to the parties. The preliminary hearing shall not include a trial of the merits of the petition, but shall only include an inquiry into whether or not there is probable cause to believe that the lawyer's continuing conduct is causing, or is likely to cause, immediate and serious injury to client or to the public. The respondent lawyer or his attorney shall be allowed to cross-examine witnesses and present evidence on his own behalf at the preliminary hearing. A lawyer suspended with notice and after a preliminary hearing shall not be entitled to a hearing under subsection (d) of this rule.

(b) Effect of Interim Suspension. An order suspending a lawyer under this rule immediately suspends his or her right to practice as of the effective date stated in the order. Simultaneously with the issuance of the suspension order, a trustee may be appointed pursuant to Rule 29 of these Rules to protect the interest of the lawyer and his or her clients.

(c) Termination of Interim or Summary Suspension. A suspension must be terminated by the Disciplinary Commission:

(1) Upon reversal or vacation of the judgment of conviction that gave rise to the suspension;

(2) Upon the effective date of the order of final discipline;

(3) Upon transfer to disability inactive status;

(4) Upon dissolution of the order of suspension by the Disciplinary Board, the Disciplinary Commission, ~~the Board of Disciplinary Appeals,~~ or the Alabama Supreme Court; or

(5) In the case of an interim suspension, upon failure of the General Counsel to file formal charges within twenty-eight (28) days after the date of interim suspension.

(d) Dissolution or Amendment of Interim Suspension or Summary Suspension. The lawyer may request dissolution or amendment of an order of suspension or summary suspension entered without notice by filing a petition with the Disciplinary ~~Board~~ Commission, a copy of which petition shall be served on the General Counsel. The petition shall be set for hearing before the Disciplinary ~~Board~~ Commission within seven (7) days of its filing. The scope of the hearing shall be as defined in subsection (a)(3) above. The Disciplinary ~~Board~~ Commission shall decide the petition with the utmost speed consistent with due process. The Disciplinary ~~Board~~ Commission may modify the order of suspension, if appropriate, and continue such provisions of that order as may be appropriate until final disposition of all disciplinary charges against the lawyer. An appeal may be taken from decisions of the Disciplinary ~~Board~~ Commission as provided in Rule 12(f) ~~and (g)~~; however, the suspension will not be stayed during the appeal process.

(e) Surrender of License. A lawyer who is suspended by action of the Disciplinary Commission pursuant to this rule shall promptly surrender his or her license to the Secretary of the Alabama State Bar within ten (10) days after issuance of the order of suspension.

(f) Notice to Clients and Court. A lawyer suspended pursuant to this rule shall immediately provide notices as required by Rule 26 of these rules.

(g) Trust Accounts. An order of suspension pursuant to this rule, when served on a bank maintaining a trust account for the suspended lawyer, shall prevent the bank from making further payments from that account.

(h) Advertising. A lawyer suspended under this rule shall, to the extent possible, immediately cancel and cease any advertising activities in which the lawyer is engaged.

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) Petition.** On petition of the General Counsel, supported by an affidavit demonstrating facts personally known to the affiant, showing that the respondent has a disability conforming to the above standard, the Disciplinary Commission may issue an order imposing temporary conditions of probation on the respondent for a specified period, not to exceed two (2) years. The conditions of probation shall be in writing. The Disciplinary Commission will appoint a member of the Bar or a suitable layperson as probation supervisor to monitor the respondent during the period of probation.~~

~~**(c) Dissolution or Amendment of Probation.** Where probation is imposed pursuant to paragraph (b) of this rule, the respondent may request dissolution or amendment of a probation order by filing a petition with the Disciplinary Board, a copy of which shall be served on the General Counsel. The petition shall be set for hearing before the Disciplinary Board within seven (7) days of its filing. The Disciplinary Board shall decide the petition with the utmost speed consistent with due process. The Disciplinary Board may modify the probation order, if appropriate, and may continue such provisions of the order as may be appropriate until final disposition of all disciplinary charges against the lawyer. An appeal may be taken from decisions of the Disciplinary Board as provided in Rule 12(f) and (g); however, the probation will not be stayed during the appeal process.~~

~~(d) Probation After Formal Hearing.~~ Probation may also be imposed by the Disciplinary Board after a formal hearing held pursuant to Rule 12(e) and in conformity with Rule 8(h). In such a case, the initial period of probation may not exceed two (2) years but may be extended in the discretion of the Disciplinary Board for an additional period not to exceed two (2) years.

~~(e)~~ (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.

~~(f)~~ **(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.

~~(g)~~ **(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.

~~(h)~~ **(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.

~~(i)~~ **(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.

~~(j)~~ **(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.

~~(k)~~ **(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 ~~for a period not to exceed two years~~; or that other discipline be imposed.

~~(1)~~ **(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 effective August 1, 2000.]

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.

RULE 22. MANDATORY SUSPENSION OR DISBARMENT

(a) The Disciplinary Commission shall disbar or suspend a lawyer:

(1) When a judgment is rendered against the lawyer for money collected by him or her as a lawyer upon which judgment and execution has been issued and returned "no property found." The record of the judgment, execution and return, or a copy thereof certified and authenticated in the manner authorized by law, is conclusive evidence thereof, unless such judgment has been set aside, reversed, or annulled.

(2) If the lawyer's conviction for a "serious crime," as defined in Rule 8 of these Rules, has become final, regardless of the plea, in any court of record of this state or any other state, or of the United States, or of a territory of the United States. The record of his or her conviction or a copy thereof certified and authenticated in the manner authorized by law is conclusive evidence of such conviction. Whether a lawyer's conviction involves a serious crime as defined in Rule 8(c)(2)(B), (C), and (D) shall be made by the Disciplinary Board upon petition by the General Counsel. The Disciplinary Board may conduct a hearing to assist it in making this determination. If the Disciplinary Board determines that the conviction involved a serious crime, then the Disciplinary Commission will determine the discipline, upon further petition by the General Counsel. When the conviction is not final, the General Counsel may file a petition with the Disciplinary Commission, make a showing of good cause, and request that the lawyer be suspended immediately, pursuant to Rule 20 of these Rules, irrespective of the lawyer's right to appeal the conviction.

(b) If the crime for which the lawyer is convicted does not constitute a "serious crime," as defined in Rule 8 of these Rules, it may nevertheless constitute grounds for discipline under Rule 2(b) of these Rules.

[Amended effective July 1, 1994.]

RULE 23. DISBARMENT BY CONSENT

(a) Request for Disbarment. A lawyer, who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct, may request to be disbarred by delivering to the General Counsel an affidavit stating that he or she desires to consent to disbarment and that:

(1) Such consent is freely and voluntarily rendered, is not the result of coercion or duress, and he or she is fully aware of the implications of submitting such consent; and

(2) The lawyer is aware that there is currently pending an investigation into, or proceeding involving, allegations of grounds for his or her disbarment, the nature of which he or she shall specifically set forth.

(b) Filing Affidavit and Order of Disbarment.

Upon receipt of the required affidavit, the General Counsel shall file it with the Disciplinary Board. The ~~Chairman of the Disciplinary Board~~ Disciplinary Hearing Officer shall enter an order disbarring the lawyer by consent.

(c) Disbarment Public. The order disbarring the lawyer by consent shall be a matter of public record, and publication will be made pursuant to Rule 33 of these Rules. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Disciplinary Board.

RULE 27. TRANSFER TO DISABILITY INACTIVE STATUS

(a) Lawyer Declared Incompetent or Mentally Ill.

If a lawyer has been judicially declared incompetent or mentally ill, or has been committed or confined by judicial action on the grounds of incompetency or mental illness, the Disciplinary Board, upon proper proof of the fact, shall enter an order transferring such lawyer to disability inactive status. A copy of the order shall be served upon such lawyer and his or her guardian, if any, and if he or she has been committed to an institution, upon the director of such institution, in such manner as the Disciplinary Board may direct.

(b) Petition to Determine Incapacity. If a petition is filed to determine whether a lawyer who is engaged in the practice of law is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, such petition shall be referred to the Disciplinary Board. The Disciplinary Board shall provide for such notice of proceedings in the matter to the respondent as it deems proper and advisable and may appoint a lawyer to represent the respondent, if he or she is without adequate representation. The Disciplinary Board may take or direct such action to be taken as it deems necessary or proper to determine whether the lawyer is so incapacitated, including the examination of the lawyer by such qualified medical experts as the Disciplinary Board shall designate. If, upon due consideration of the matter, the Disciplinary Board concludes that the lawyer is incapacitated from continuing to practice law, it shall enter an order transferring him or her to disability inactive status on the ground of such disability.

(c) Incapacity Claimed by Respondent Lawyer. If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental or physical infirmity, illness, or addiction to drugs or intoxicants, which makes it impossible for the respondent to adequately

defend himself or herself, the Disciplinary Board shall enter an order transferring the respondent to disability inactive status until a determination is made of the respondent's ability to adequately defend himself or herself. The Disciplinary Board shall appoint a lawyer to represent the respondent if he or she is without adequate representation, and may take or direct such action to be taken as it deems necessary or proper to determine whether the respondent is able to adequately defend himself or herself, including the examination of the respondent by such qualified medical experts as the Disciplinary Board shall designate. If the Disciplinary Board determines that the respondent is able to adequately defend himself or herself, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceedings against the respondent.

(d) Appeal. Either party may appeal the decision of the Disciplinary Board, in accordance with the procedures set out in Rule 12(f) and ~~(g)~~. Whether the action of the Disciplinary Board will be stayed during the appeal is within the discretion of the body considering the appeal.

(e) Disciplinary Proceedings Stayed. A pending disciplinary proceeding against the respondent shall be held in abeyance so long as the respondent remains on disability inactive status.

(f) Expenses. All expenses incurred in paragraphs (a), (b), or (c) of this rule, including legal and medical fees, shall be borne by the respondent, unless the indigency of the respondent is affirmatively established, in which case all reasonable legal and medical fees, as determined by the Disciplinary Board, may be paid upon application to the Client Security Fund.

(g) Reinstatement. A lawyer transferred to disability inactive status under the provisions of this rule may not resume active status until reinstated by order of the Disciplinary Board. Pursuant to Rule 28 of these Rules and Appendix "A" to these Rules, a

lawyer transferred to disability inactive status under the provisions of this rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as the Disciplinary Board may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted upon a showing by clear and convincing evidence that the lawyer's disability has been removed and that he or she is fit to resume the practice of law. Upon such application, the Disciplinary Board may take or direct such action to be taken as it deems necessary or proper to determine whether the lawyer's disability has been removed, including a direction for an examination of the lawyer by such qualified medical experts as the Disciplinary Board shall designate. In its discretion, the Disciplinary Board may direct that the expense of such examination shall be paid by the lawyer, and that the lawyer establish proof of competence and learning in law, which proof may include certification by the Bar Examiners of his or her successful completion of an examination for admission to practice.

If a lawyer has been transferred to disability inactive status by an order in accordance with the provisions of paragraph (a) of this rule, and, thereafter, has been judicially declared to be competent, the Disciplinary Board may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(h) Burden of Proof. In a proceeding seeking to transfer a lawyer to disability inactive status under this rule, the burden of proof shall rest with the petitioner. In a proceeding seeking an order of reinstatement to active status under this rule, the burden of proof shall rest with the applicant.

(i) Waiver of Physician-Patient Privilege. The filing of a petition for reinstatement to active status by a lawyer transferred to disability inactive status shall be deemed to constitute a waiver of any

physician-patient privilege with respect to any treatment of the lawyer during or prior to the period of disability. The lawyer shall be required to disclose the name of every psychiatrist, psychologist, and physician by whom, and every hospital or other institution in which the lawyer has been examined or treated with respect to his or her disability, and the lawyer shall furnish to the Disciplinary Board written consent to each to divulge such information and records as may be requested by medical experts appointed by the General Counsel or the Disciplinary Commission.

(j) Public Nature of Disability Inactive Status.

An order of the Disciplinary Board transferring a lawyer to or from disability inactive status will be public.

[Amended effective August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 27(d), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

RULE 28. REINSTATEMENT

(a) Prohibition of Practice. A lawyer who has been disbarred by consent or after hearing, or who has been suspended for more than ninety (90) days, or who has been placed on disability inactive status pursuant to Rule 27 of these Rules, or who has voluntarily surrendered his or her license, shall not resume the practice of law until reinstated by order of the Disciplinary Board, which effective date shall be established by the Alabama Supreme Court.

(b) Time of Reinstatement. A lawyer who has been suspended for more than ninety (90) days may not apply for reinstatement until the period of suspension has terminated. A lawyer who has been disbarred by consent or after hearing, or who has surrendered his or her license, may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment or surrender of license. A lawyer on disability inactive status may apply for reinstatement pursuant to Rule 27(g) of these Rules.

(c) Petitions for Reinstatement. Petitions for reinstatement shall be filed with the Disciplinary Clerk of the Alabama State Bar and served upon the General Counsel, and shall be in the form and contain the material specified in Appendix "A" to these Rules. A petition that does not substantially comply with the form specified in Appendix "A" or which does not contain the information and documents specified in Appendix "A" or which does not contain satisfactory proof of compliance with the provisions of Rule 26 of these Rules shall constitute prima facie evidence that the Petitioner has not met the burden of proof required for reinstatement under this rule and the petition shall be summarily denied. Upon receipt of the petition by the Disciplinary Board, a Disciplinary Hearing Officer shall promptly set the petition for a hearing. At the hearing, the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications to practice law in this State and that his or her

resumption of the practice of law within the State will not be detrimental to the integrity and standing of the Bar or the administration of justice, and will not be subversive to the public interest. Proof of compliance with the provisions of Rule 26 of these Rules shall be a condition precedent to consideration of a petition for reinstatement. The Disciplinary Board shall, within seven (7) days after the hearing, issue an order granting or denying the petition.

(d) Proceedings. In all proceedings upon a petition for reinstatement, cross-examination of the petitioner's witnesses shall be conducted by the General Counsel, and evidence in opposition to the petition, if any, shall be submitted by the General Counsel.

(e) Costs. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Disciplinary Board to cover anticipated costs of the reinstatement proceedings.

(f) Publication of Petition. Notice that a person has applied for reinstatement may be published in a newspaper of general circulation in the city or county of residence of the petitioner or in the judicial circuit or circuits in which the petitioner last practiced, or both, and may be published to the local bar association, inviting the public or the local bar to provide any information relevant to the qualifications of the petitioner.

(g) Approval or Denial of Petition. If the petitioner is found unfit to resume the practice of law, the petition shall be denied. If the petitioner is found fit to resume the practice of law, the order of the Disciplinary Board shall reinstate him or her; provided, however, that the order may make such reinstatement conditional upon any or all of the following:

(1) Restitution (partial or complete), with or without interest, to parties harmed by the petitioner's

misconduct, whether or not the obligation has been discharged in bankruptcy or by operation of law;

(2) Payment of all or part of the costs of reinstatement proceedings but not lawyer's fees;

(3) Probation or limitation upon practice as provided by Rule 8 and Rule 21 of these Rules;

(4) Appointment of a probation supervisor, monitor, or trustee or receiver;

(5) Proof of passage of the bar examination, the professional responsibility examination, or both, or any other proof of competency deemed appropriate by the Disciplinary Board;

(6) Attendance at a continuing legal education course or courses in addition to the annual mandatory continuing legal education requirement; and

(7) Any other requirement that the Disciplinary Board deems appropriate.

(h) Effective Date. No petitioner shall be reinstated to the practice of law in the State of Alabama until the effective date of reinstatement as established by order of the Alabama Supreme Court.

~~(h)~~ **(i) Reapplication.** No petition for reinstatement under this rule shall be filed within one year following an adverse order of the Disciplinary Board on a petition for reinstatement filed by or on behalf of the same person, which has become final.

~~(i)~~ **(j) Appeal.** Either party may appeal the decision of the Disciplinary Board pursuant to Rule 12(f) ~~and (g)~~. Whether the action of the Disciplinary Board will be stayed during the appeal is within the discretion of the body considering the appeal.

~~(j)~~ **(k) Notice.** Upon reinstatement, the Disciplinary Board shall transmit notice of such reinstatement to all parties to whom notice of

discipline or transfer to disability inactive status were sent under Rule 30 of these Rules.

[Amended effective August 1, 1997; August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 28(c) and (i), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

RULE 29

APPOINTMENT OF TRUSTEE OR SUPERVISING LAWYER TO PROTECT THE INTERESTS OF A LAWYER AND THE LAWYER'S CLIENTS

(a) Appointment of Trustee or Supervising Lawyer. If a lawyer has been transferred to disability inactive status because of incapacity or disability, has disappeared or died, has been suspended or disbarred, or has surrendered his or her license, and there is evidence that the lawyer has not complied with Rule 26 of these Rules or that the lawyer probably will not comply, as demonstrated by his or her failure to respond or otherwise cooperate or participate in disciplinary proceedings or that the lawyer has been suspended pursuant to Rule 20 of these Rules and there is evidence that the appointment of a trustee or supervising lawyer is necessary to protect the interests of the lawyer or the lawyer's clients, ~~and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist,~~ the presiding judge of the judicial circuit in which the lawyer maintained his or her practice, the Disciplinary Board, or the Disciplinary Commission, upon proper proof of that fact, shall appoint a member or members of the Bar to act as trustee or trustees or supervising lawyer or lawyers to inventory the files of the disabled, disappeared, deceased, suspended, or disbarred lawyer or the lawyer that has surrendered his or her license and to take such action as may be necessary and appropriate to protect the interests of the lawyer and the lawyer's clients. If a reasonable fee is approved by the court, the Disciplinary Commission, or the Disciplinary Board, the appointed member or members may apply to the Client Security Fund of the Alabama State Bar for the payment of the fee.

(b) Confidentiality. A member of the Bar appointed as trustee or supervising lawyer shall not be permitted to disclose any information contained in any file inventoried pursuant to the appointment without the consent of the client to whom the file relates, except as may be necessary to carry out the order of the court

or Disciplinary Board or Disciplinary Commission to inventory the files and to take such action as may be necessary and appropriate to protect the interests of the lawyer and the lawyer's clients.

RULE 32. RECORD KEEPING

(a) Appointment of Disciplinary Clerk and Maintenance of Files. The Executive Secretary of the Alabama State Bar shall appoint, subject to approval of the Board of Bar Commissioners of the Alabama State Bar, a Disciplinary Clerk and such Deputy Clerks as the Executive Secretary may from time to time deem appropriate. The Disciplinary Clerk shall have such qualifications as the Board of Bar Commissioners deems appropriate, and shall be responsible for maintaining formal and informal opinions of the Office of General Counsel and the Disciplinary Commission; accepting the filing of grievances, charges issued by the Disciplinary Commission, and pleadings or other papers filed with the Disciplinary Commission, or the Disciplinary Board, ~~the Board of Disciplinary Appeals, or the Prediscipline Diversion Board~~; issuing process, and preparing and maintaining records of each disciplinary proceeding; and performing such other duties as are assigned by the Board of Bar Commissioners. The Disciplinary Clerk shall maintain the files of all matters concluded by discipline for the life of the member disciplined and shall maintain all other matters relating to discipline ~~or diversion~~ (including but not limited to complaints investigations) for a period of not less than six (6) years.

(b) Destruction of Files. All files relating to a complaint terminated by a dismissal shall be expunged from the files of the Alabama State Bar after six (6) years have elapsed from the date of dismissal. The term "expunge" shall mean that all files or other evidence of the existence of the complaint shall be destroyed, except that the Alabama State Bar may keep a docket showing the names of each respondent and complainant, the final disposition, and the date all files relating to the matter were expunged.

After a file has been expunged, any Alabama State Bar response to an inquiry requiring a reference to the matter shall state that any files the Alabama State Bar may have had of such matter have been expunged pursuant

to the Rules of Disciplinary Procedure and that no inference adverse to the respondent is to be drawn on the basis of the incident in question.

(c) Extension of Time of Destruction. Upon application to the Disciplinary Commission by the General Counsel, for good cause shown and with notice to the respondent and opportunity to be heard, files that would otherwise be expunged under paragraph (b) of this rule may be retained for an additional period not to exceed three (3) years, as the Disciplinary Commission deems appropriate.

(d) Local Grievance Committee. A local grievance committee shall maintain files of each complaint filed with it or investigated by it for a period of not less than six (6) years. A file relating to a complaint terminated by dismissal shall be expunged as provided in (b) above.

If the Disciplinary Commission extends the period of retention of a file beyond the six-year period, a local grievance committee may likewise retain the file for the period specified by the Disciplinary Commission.

(e) Official Court File. The Disciplinary Clerk will be responsible for maintaining an official court file containing all pleadings and other documents filed with the Disciplinary Board, and the Disciplinary Commission, ~~the Board of Disciplinary Appeals, and the Prediscipline Diversion Board~~ in connection with any formal proceeding ~~pending before those boards~~ under these Rules.

[Amended effective August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 32(a) and (e), effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

RULE 33. PUBLICATION AND COSTS

(a) Lawyer to Bear Costs of Publication. In a case involving the imposition of discipline consisting of disbarment, suspension, public probation, or public reprimand with general publication, or the transfer of a lawyer to disability inactive status, notice shall be published in the official Bar publication and in a newspaper of general circulation in each judicial circuit of the State of Alabama in which the disciplined or disabled lawyer maintained an office for the practice of law. The costs of publishing the newspaper notice shall be assessed against the disciplined or disabled lawyer. In a case involving the imposition of a reprimand, without general publication, notice of such reprimand will be published only in the official Bar publication.

(b) Assessment of Research Fee and Recovery of Costs. The cost of production, when photocopying or other document production is performed by the Alabama State Bar for purposes of these Rules, shall be a commercially reasonable rate, not to exceed \$1.00 per page. In addition to reproduction charges, the Bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings and identification of documents to be produced. These costs shall include a minimum research fee of \$25.00 per request in addition to the costs of reproduction.

(c) Production of Voluminous Documents. When the Bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in its possession, the Bar may decline to reproduce the documents and shall inform the person requesting the documents of the following options:

(1) Purchase the transcripts from the court reporter's service that produced them;

(2) Purchase the documents from the third party from whom the Bar received them; or

(3) Designate a commercial photocopy service to whom the Bar shall deliver the original documents to be copied, at the requesting party's expense, provided the photocopy service agrees to preserve and return the original documents and not to release them to any person without the Bar's consent.

(d) Taxable Costs. Taxable costs of the proceeding shall include:

(1) Investigative costs, including travel and out-of-pocket expenses;

(2) Court reporter's fees;

(3) Copy costs;

(4) Telephone charges;

(5) Fees for translation services;

(6) Witness expenses, including mileage, per diem, and actual and necessary expenses; provided, however, that witnesses may be compensated for travel to and attendance at hearings only, and shall be compensated in the same manner and at the then prevailing rate of compensation as provided for in-state travel for state employees and for mileage for state employees or as otherwise directed by the Board of Bar Commissioners of the Alabama State Bar.

(7) Expenses of a Disciplinary Hearing Officer, members of the Disciplinary Board, and members of the Disciplinary Commission, ~~members of the Board of Disciplinary Appeals, and members of the Prediscipline Diversion Board;~~

(8) Expenses incurred by the Office of General Counsel in the proceedings; and

(9) An administrative fee in the amount of \$750 when costs are assessed in favor of the Bar.

(e) Discretion to Award Costs. A Disciplinary Hearing Officer, the Disciplinary Board, or the Disciplinary Commission, ~~or the Board of Disciplinary Appeals~~ shall each have discretion to award costs. Absent an abuse of that discretion, such an award shall not be reversed.

[Amended effective August 1, 2000.]

Note from the reporter of decisions: The order amending Rule 33, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

RULE 35.

DISQUALIFICATION

A current or former member of the Board of Bar Commissioners, of the staff of the Office of General Counsel, of the Disciplinary Commission, of the Disciplinary Board, ~~of the Board of Disciplinary Appeals,~~ or of a ~~Prediscipline Diversion Board~~ local grievance committee shall not represent a respondent or appear as a character witness for a respondent in any proceeding that is or was being investigated and/or prosecuted during the ~~former~~ member's service on the respective Board, Commission, ~~or~~ staff, or committee or within a three-year period of the member's ceasing to serve on the Board, the Commission, ~~or~~ the staff or the committee. The disqualification stated in this rule is imputed to members of the firms with whom the members are associated under Rule 1.10, Ala. R. Prof.C.

APPENDIX "A"

Petitions for reinstatement shall be addressed to the General Counsel and eight (8) copies filed with the Disciplinary Clerk of the Alabama State Bar.

(a) The petition shall be sworn and shall contain the following information:

(1) Name, age, residence, address, and number and relation of dependents of the petitioner;

(2) A statement showing all residences maintained during the period of the petitioner's suspension, disbarment, or disability inactive status, with names and addresses of landlords, if any;

(3) The nature of the petitioner's occupation in detail during the period of the petitioner's suspension, disbarment, or disability inactive status, with names and addresses of all partners, associates in business, and employers, if any, and exact dates and duration of all such relations and employments;

(4) A statement showing the approximate monthly earnings and other income of the petitioner, and the sources from which all such earnings and income were derived during the period of the petitioner's suspension, disbarment, or disability inactive status.

(5) Copies of federal and state income tax returns filed by the petitioner during the period of his or her suspension, disbarment, or disability inactive status, together with the petitioner's written consent to the Disciplinary Board to secure the originals of said returns from the proper agency of the Treasury Department of the United States or the Department of Revenue of the state;

(6) A statement showing all claimed or admitted financial obligations of the petitioner at the date of filing the petition, together with the dates when the obligations were incurred and the names and addresses of all creditors;

(7) A statement showing the dates, general nature, and final disposition of every civil action wherein the petitioner was either a party-plaintiff or -defendant or in which he or she had or claimed an interest, together with the dates of filing of complaints, titles of courts and causes, and the names and addresses of all parties-plaintiff and -defendant, names and addresses of lawyers for such parties and of the trial judge, or judges, and the names and addresses of all witnesses who testified in such action or actions;

(8) A statement showing dates, general nature, and ultimate disposition of every matter involving the arrest or prosecution of the petitioner during the period of his suspension, disbarment, or disability inactive status for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors, and trial judges;

(9) A statement as to whether any applications were made during the period of the petitioner's suspension, disbarment, or disability inactive status for a license requiring proof of good character for its procurement; and, as to each application, the dates, the names, and the addresses of the authorities to whom each application was addressed and the disposition thereof;

(10) A statement of any procedure or inquiry during the period of the petitioner's suspension, disbarment, or disability inactive status concerning the petitioner's standing as a member of any profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of the petitioner; and, as to each, the dates, facts, and disposition thereof, and the name and address of the authority in possession of the records thereof;

(11) A statement of facts claimed by the petitioner to justify reinstatement.

(b) The petition for reinstatement shall be accompanied by affidavits of the clerks and registers of the courts in the several counties in which the petitioner has resided during the period of is or her suspension, disbarment, or disability inactive status, establishing that he or she has not practiced in their respective courts during the period of his or her suspension, disbarment, or disability inactive status.

[Amended effective January 9, 2004.]

Note from the reporter of decisions: The order amending Appendix "A," effective January 9, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 862 So.2d.