



ARKANSAS JUDICIARY

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## **SECTION 9. SERVICE OF COMPLAINT/ RESPONSE/ FAILURE TO**

### **RESPOND/ RECONSIDERATION.**

#### **A. Service of Complaint.**

(1) Upon the filing of a formal complaint, the Executive Director shall furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he or

she may file a written response in affidavit form with any supporting evidence desired. The attorney's mailing address on record with the Clerk shall constitute the address for service by mail. Attorneys shall be responsible for informing the Clerk in writing and within a reasonable time of any change of such address. Certified mailing of the formal complaint to said address shall be deemed a waiver of confidentiality for purposes of Section 9 (A)(2)(c).

(2) Service may be effected on a respondent attorney by:

(a) Mailing a copy of the formal complaint to attorney's address of record by certified, restricted delivery, return receipt mail; or,

(b) Personal service, as provided by the Arkansas Rules of Civil Procedure or by an Investigator with the Office of Professional Conduct or by an affidavit of service signed by the respondent attorney; or,

(c) When reasonable attempts to accomplish service by Section 9(A)(2)(a) or Section 9(A)(2)(b) have been unsuccessful, then a warning order, in such form as prescribed

by the Committee, shall be published weekly for two consecutive weeks in a newspaper of general circulation within this State or within the locale of the attorney's address of record. In addition, a copy of the formal complaint and warning order shall be sent to the respondent attorney's address of record by regular mail.

(3) An attorney's failure to provide an accurate, current mailing address to the Clerk, as required by Section 9(A)(1), or the failure or refusal to receive certified mailing of a formal complaint, shall be deemed a waiver of confidentiality for the purposes of the issuance of a warning order.

(4) Unless good cause is shown for an attorney's non-receipt of a certified mailing of a formal complaint, the attorney shall be liable for the actual costs and expenses for service or the attempted service of a formal complaint, to include all expenses associated with the effectuation of service. Such sums will be due and payable to the Committee before any response to a formal complaint will be accepted or considered by the Committee.

(5) After service has been effected by any of the aforementioned means, subsequent mailings by the Committee to the respondent attorney may be by regular mail to the attorney's address of record, to the address at which service was accomplished, or to such

address

as may have been furnished by the attorney, as the appropriate circumstance may dictate, except

that notices of hearings and letters of caution, reprimand, suspension, or initiation of disbarment

proceedings shall also be sent by certified, return receipt mail.

(6) Service on a non-resident attorney may be accomplished pursuant to Section 9(A)(2)(a), (b), or (c) or in any manner prescribed by the law of the jurisdiction to which the service is directed.

#### B. Time and Manner of Response.

(1) Upon service of a formal complaint, pursuant to Section 9(A)(2)(a) or Section 9(A)(2)(b), or the date of the first publication, pursuant to Section 9(A)(2)(c), the attorney shall have thirty (30) days in which to file a written response consisting of an original and eight (8) copies with the Executive Director. In the event that the Executive Director has not received a response within thirty (30) days following the date of service and an extension of time has not been granted, the Executive Director shall proceed to issue ballots as provided in Section 10.

(2) At the request of an attorney, the Executive Director is authorized to grant an extension of reasonable length for the filing of a response. Subsequent requests for extensions must be in written form and will be ruled on by the Chairperson of the Committee or the chair of the panel to which the matter has been assigned.

(3) Within ten (10) calendar days of receiving the attorney's response to the complaint, the Executive Director shall provide a copy of the attorney's response to the complainant and may provide a copy of the attorney's response to any other person who has provided an affidavit that was attached to the complaint and advise that the complainant and others have fifteen (15) calendar days in which to rebut or refute any allegations or information contained in the attorney's response. The Executive Director may include any rebuttal made by the complainant and other affiants as a part of the material submitted to the Committee for decision, and any such rebuttal shall be provided to the respondent attorney for informational purposes only, with no response required. If a response or rebuttal to be submitted to the Committee contains allegations or proof of violation of the Rules not previously alleged, it may be placed in the form of a supplemental complaint, and the respondent attorney shall be provided a copy and permitted to respond in the manner prescribed in subsection B(1) of this Section.

(4) The calculation of the time limitations specified in Section 9(B) shall commence on the day following service upon the respondent. If the due date of a response falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next regular business day.

#### C. Failure to Respond/ Reconsideration.

(1) An attorney's failure to provide, in the prescribed time and manner, a written response to a formal complaint served in compliance with Section 9(A)(2) shall constitute separate and distinct grounds for the imposition of sanctions less than a suspension of license, without regard for the merits of the underlying, substantive allegations of the complaint; or

(2) May be considered for enhancement of sanctions imposed upon a finding of violation of the Rules.

(3) The separate imposition or the enhancement of sanctions for failure to respond may be accomplished by the panel's notation of such failure in the appropriate sanction

order and shall not require any separate or additional notice to the respondent attorney.

(4) Failure to respond to a formal complaint shall constitute an admission of the factual allegations of the complaint and shall extinguish a respondent's right to a public hearing.

(a) Provided, however, that a respondent attorney, within the time specified in Section 10(E)(3), may file with the Executive Director an original and eight (8) copies of a petition for reconsideration, stating, on oath, compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to respond. Otherwise, the panel's decision shall be final and will be filed of record with the Clerk. The Office of Professional Conduct may respond to any petition for reconsideration within fifteen (15) days after it is filed.

(b) Upon the filing of a petition for reconsideration and any response, the Executive Director shall provide each member of the panel a copy of the petition and any response for vote by written ballot consistent with provisions of Section 10.

(c) If a majority of the panel, upon a finding of clear and convincing evidence, votes to grant the petition for reconsideration, the panel may:

(i) Permit the attorney to submit a belated affidavit of response to the substantive allegations of the formal complaint and the matter shall proceed as though the response had been made timely; and/or

(ii) Set aside any sanction imposed solely on the basis of the attorney's failure to respond.

(d) If the petition for reconsideration is denied, the panel's original decision and imposition of sanctions become final and will be filed of record with the Clerk. Appeal from the Committee's denial of reconsideration and the imposition of sanctions may be taken in the time and manner prescribed by the applicable provisions of Section 12. Provided, however, that such appeal cannot attack the substantive allegations of the complaint and shall be limited to the panel's denial of reconsideration.

**Associated Court Rules:**

Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

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