

APPENDIX A

PROPOSED AMENDMENT IN LEGISLATIVE FORMAT

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CHAPTER 3 RULES OF DISCIPLINE

3-2. DEFINITIONS

RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms have the meaning set forth below unless their use clearly indicates a different meaning:

(a) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(b) The Board or the Board of Governors. The board or the board of governors is the board of governors of The Florida Bar.

(c) Chief Branch Discipline Counsel. Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.

(ed) Complainant or Complaining Witness. A complainant or any complaining witness is any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(de) This Court or the Court. This court or the court is the Supreme Court of Florida.

(ef) Court of this State. Court of this state is a state court authorized and established by the constitution or laws of the state of Florida.

(g) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned with respect to a particular grievance committee or matter. The designated reviewer for a special grievance

committee will be selected by the president and approved by the board.

(fh) Diversion to Practice and Professionalism Enhancement Programs. Diversion to practice and professionalism enhancement programs is removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

(gi) Executive Committee. Executive committee is the executive committee of the board of governors of The Florida Bar.

(hj) Executive Director. Executive Director is the executive director of The Florida Bar.

(k) Final Adjudication. Final adjudication is a decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

(il) Inquiry. Inquiry is a written communication received by bar counsel questioning the conduct of a member of The Florida Bar.

(jm) Practice and Professionalism Enhancement Programs. Practice and professionalism enhancement programs are programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

(kn) Probable Cause. Probable cause is a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(lo) Referral to Practice and Professionalism Enhancement Programs. Referral to practice and professionalism enhancement

programs is placement of a lawyer in skills enhancement programs as a disciplinary sanction.

(mp) Referee. Referee is a judge or retired judge appointed to conduct proceedings as provided under these rules.

(nq) Respondent. Respondent is a member of The Florida Bar or a lawyer subject to these rules who is accused of misconduct or whose conduct is under investigation.

(or) Staff Counsel. Staff counsel is a lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

~~**(p) Chief Branch Discipline Counsel.** Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.~~

~~**(q) Designated Reviewer.** The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned with respect to a particular grievance committee or matter. The designated reviewer for a special grievance committee will be selected by the president and approved by the board.~~

~~**(r) Final Adjudication.** Final adjudication is a decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.~~

3-5 TYPES OF DISCIPLINE

RULE 3-5.1 GENERALLY

A judgment ~~entered~~, finding a member of The Florida Bar guilty of misconduct, will include 1 or more of the following disciplinary measures:

(a) Admonishments. A Supreme Court of Florida order finding minor misconduct and ~~adjudging~~ordering an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, a grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, on review of the report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment will be made a part of the record of the proceeding after the admonishment is administered.

(b) Minor Misconduct. Minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction.

(1) *Criteria.* In the absence of unusual circumstances, misconduct will not be regarded as minor if any of the following conditions exist:

(A) the misconduct involves misappropriation of a client's funds or property;

(B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;

(~~C~~D) the respondent has been publicly disciplined in the past 3 years;

(DE) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;

(EF) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or

(FG) the misconduct constitutes the commission of a felony under applicable law.

(2) *Discretion of Grievance Committee.* A grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present, despite the presence of 1 or more of the criteria described in ~~subpart~~subdivision (1) of this rule. ~~When the grievance committee recommends an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program under these circumstances, its~~Any grievance committee report will recommending an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program despite the presence of the criteria in subdivision (1) must contain a detailed explanation of the circumstances giving rise to the committee's recommendation.

(3) *Recommendation of Minor Misconduct.* If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of \$1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the

disciplinary review committee by the designated reviewer [as provided elsewhere in rule 3-7.5(b)]these rules, the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within 1530 days after service of the report. If rejected by the respondent, ~~the report will be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel~~ will prepare a formal complaint as in the case of a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct will be given, in writing, to the complainant.

(4) *Rejection of Minor Misconduct Reports.* The board of governors' rejection ~~by the board of governors~~ of a grievance committee report of minor misconduct, without dismissal of the case, or remand to the grievance committee, is deemed a finding of probable cause. The respondent's rejection ~~of a report by a respondent~~ is deemed a finding of probable cause ~~for minor misconduct~~. At trial before a referee following a respondent's rejection ~~by a respondent~~ of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct.* A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 1530 days after service of a notice of a finding of probable cause by a grievance committee or the board of governors. An admission of minor misconduct may be conditioned on acceptance by the grievance committee or the board of governors, but the respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance

committee or board of governors may consider the admission without further evidentiary hearing and may either reject the admission, affirming its prior action, or accept the admission ~~and issue its report of minor misconduct, in which case, the~~ report of minor misconduct will be issued by the grievance committee. If a respondent's admission is accepted by the grievance committee or board of governors, the respondent may not later reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, the admission may not be considered or used against the respondent in subsequent proceedings.

(c) Probation. The respondent may be placed on probation for a stated period of time ~~of not less than~~ between 6 months ~~nor more than~~ and 5 years or for an indefinite period determined by conditions stated in the order. The judgment will state the conditions of the probation, which may include, but are not limited to, the following:

- (1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;
- (2) supervision of all or part of the respondent's work by a member of The Florida Bar;
- (3) required reporting to a designated agency;
- (4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;
- (5) supervision over fees and trust accounts as the court directs; or
- (6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. The respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar, on failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

(d) Public Reprimand. A public reprimand will be administered in the manner prescribed in the judgment ~~but all reprimands will be reported in the Southern Reporter. Due notice will be given~~The bar will provide due notice to the respondent of any proceeding set to administer the reprimand. The respondent must appear personally before the Supreme Court of Florida, the board of governors, any judge designated to administer the reprimand, or the referee, if required, and this appearance will be made a part of the record of the proceeding.

(e) Suspension. The respondent may be suspended from the practice of law for a period of time to be determined by the conditions imposed by the judgment or order or until further order of the court. During this suspension, the respondent continues to be a member of The Florida Bar but without the privilege of practicing. A suspension of 90 days or less does not require proof of rehabilitation or passage of the Florida bar examination, and the respondent will become eligible for all privileges of members of The Florida Bar on the expiration of the period of suspension. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the Florida bar examination and the respondent will not become eligible for all privileges of members of The Florida Bar until the court enters an order reinstating the respondent to membership in The Florida Bar. No suspension will be ordered for a specific period of time more than 3 years.

An order or opinion imposing a suspension of 90 days or less will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the end of the term of the suspension and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

An order or opinion imposing a suspension of more than 90 days will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the date of the court's order of reinstatement and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

(f) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the bar. Permanent disbarment precludes readmission. A former member who has not been permanently disbarred may only be admitted again on full compliance with the rules and regulations governing admission to the bar. Except as otherwise provided in these rules, no application for readmission may be tendered within 5 years after the date of disbarment or a longer period ordered by the court in the disbarment order or at any time after that date until all court-ordered restitution and outstanding disciplinary costs have been paid.

Disbarment is the presumed sanction for lawyers found guilty of theft from a lawyer's trust account or special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or trustee. A respondent found guilty of theft will have the opportunity to offer competent, substantial evidence to rebut the presumption that disbarment is appropriate.

Unless waived or modified by the court on motion of the respondent, an order or opinion imposing disbarment will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion and will provide that the disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients.

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again ~~upon~~ full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of -5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or ~~such other~~ another period of time in excess of 5 years contained in ~~said~~ that order.

(h) Notice to Clients. Unless the court orders otherwise, when the respondent is served with an order of disbarment, disbarment on consent, disciplinary revocation, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent must, immediately furnish a copy of the order to all:

- (1) ~~all of the respondent's clients~~ of the respondent with matters pending in the respondent's practice;
- (2) ~~all opposing counsel or co-counsel in the matters listed in~~ (1), above;

(3) ~~all~~ courts, tribunals, or adjudicative agencies before which the respondent is counsel of record; and

(4) ~~all~~ state, federal, or administrative bars of which respondent is a member.

Within 30 days after service of the order the respondent must furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

(i) Forfeiture of Fees. An order of the Supreme Court of Florida or a report of minor misconduct adjudicating a respondent guilty of entering into, charging, or collecting a fee prohibited by the Rules Regulating The Florida Bar may order the respondent to forfeit all or any part of the fee ~~or any part thereof~~. In the case of a clearly excessive fee, the excessive amount of the fee may be ordered returned to the client, and a fee otherwise prohibited by the Rules Regulating The Florida Bar may be ordered forfeited to The Florida Bar Clients' Security Fund and disbursed in accordance with its rules and regulations.

(j) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee, or that the respondent has converted trust funds or property. The amount of restitution will be specifically set forth in the disciplinary order or agreement ~~and will not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee will not exceed the amount of the fee, or in the case of conversion will not exceed the amount of the conversion established in disciplinary proceedings.~~ Restitution for an excessive fee will not exceed the amount by which that fee is clearly excessive. Restitution for a prohibited or illegal fee will not exceed the amount of the fee. Restitution for a conversion will not exceed the amount

of the conversion established in disciplinary proceedings. The disciplinary order or agreement ~~will also~~must state to whom restitution must be made and the date by which it must be completed. Failure to comply with the order or agreement will cause the respondent to become a delinquent member and will not preclude further proceedings under these rules. The respondent must provide the bar with telephone numbers and current addresses of all individuals or entities to whom the respondent is ordered to pay restitution.

RULE 3-5.2 EMERGENCY SUSPENSION; ~~AND INTERIM PROBATION; OR INTERIM PLACEMENT ON THE INACTIVE LIST FOR INCAPACITY NOT RELATED TO MISCONDUCT; AND FREEZING TRUST ACCOUNTS~~

~~(a) Petition for Emergency Suspension.~~

(1) *Great Public Harm.* The Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis on petition of The Florida Bar, authorized by its president, president-elect, or executive director and supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm.

(2) *Discipline by Foreign Jurisdiction.* The Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis under this chapter on petition of The Florida Bar, authorized by its president, president-elect, or executive director and supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbarring a lawyer from the practice of law ~~under rule 3-7.2.~~

(3) *Formal Complaint, Answer, and Defenses.* A petition for emergency suspension also constitutes a formal complaint. The respondent has 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for emergency

suspension in which to file an answer and any affirmative defenses to the bar's petition.

(4) *Appointment of Referee.* The Supreme Court of Florida will promptly appoint or direct the appointment of a referee on entry of an order of suspension.

(5) *New Cases and Existing Clients.* Any emergency suspension order issued under this subdivision immediately precludes the lawyer from accepting any new cases and, unless otherwise ordered, permits the lawyer to continue to represent existing clients for only the first 30 days after issuance of an emergency order. Any fees paid to the suspended lawyer during the 30-day period must be deposited in a trust account from which withdrawals may be made only in accordance with restrictions imposed by the court.

(6) *Motions for Dissolution.* The lawyer may move at any time to dissolve or amend an emergency order by motion filed with the Supreme Court of Florida, unless the bar has demonstrated, through a hearing or trial, the likelihood of prevailing on the merits on any of the underlying violations of the Rules Regulating The Florida Bar. The lawyer must serve a copy of the motion on bar counsel. The motion will not stay any other proceedings or applicable time limitations in the case and will immediately be assigned to a referee designated by the chief justice, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion. The filing of the motion will not stay the operation of an emergency suspension order entered under this subdivision.

(7) *Successive Motions Prohibited.* The Supreme Court of Florida will summarily dismiss any successive motions for dissolution that raise issues that were, or with due diligence could have been, raised in a prior motion.

(8) *Hearing on Petition to Terminate or Modify Suspension.* The referee will hear a motion to terminate or modify a suspension

imposed under this subdivision within 7 days of assignment and submit a report and recommendation to the Supreme Court of Florida in an electronic format approved by the supreme court within 7 days of the hearing date. The referee will recommend dissolution or amendment, whichever is appropriate, if the bar cannot demonstrate a likelihood of prevailing on the merits on at least 1 of the underlying violations of the Rules Regulating The Florida Bar that establishes the respondent is causing great public harm.

(9) *Review by the Supreme Court of Florida.* The Supreme Court of Florida will review and act on the referee's findings and recommendations on receipt of the referee's report on the motion for dissolution or amendment. Briefing schedules following the petition for review are as set forth in subchapter 3-7 of these rules.

(10) *Hearings on Issues Raised in Petitions for Emergency Suspension and Sanctions.* Once the Supreme Court of Florida has granted a petition for emergency suspension under this subdivision, the referee appointed by the court will hear the matter in the same manner as provided in rule 3-7.6, except that the referee will hear the matter after the lawyer charged has answered the charges in the petition for emergency suspension or when the time has expired for filing an answer. The referee will issue a final report and recommendation in an electronic format approved by the supreme court within 90 days of appointment. If the time limit specified in this subdivision is not met, that portion of an emergency suspension order will be automatically dissolved, except on order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken.

(b) Petition for Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct.

(1) *Petition.* The Supreme Court of Florida may issue an order placing a lawyer on interim probation, under the conditions provided in ~~subdivision (c) of rule 3-5.1~~ or placing the lawyer on the inactive list for incapacity not related to misconduct as ~~provided in rule 3-7.13~~ elsewhere in this chapter. ~~The order may be issued on~~ petition of The Florida Bar, authorized by its president, president-elect, or executive director and supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that conditions or restrictions on a lawyer's privilege to practice law in Florida are necessary to protect the public.

(2) *Formal Complaint, Answer, and Defenses.* ~~This~~The petition also constitutes the formal complaint. The respondent has 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for interim probation in which to file an answer and any affirmative defenses to the bar's petition.

(3) *Appointment of Referee.* The Supreme Court of Florida will promptly appoint or direct the appointment of a referee on entry of an order of interim probation.

(4) *New Cases and Existing Clients.* Any order placing a lawyer on the inactive list for incapacity not related to misconduct under this subdivision immediately precludes the lawyer from accepting any new cases and, unless otherwise ordered, permits the lawyer to continue to represent existing clients for only the first 30 days after issuance of the order. Any fees paid to the lawyer during the 30-day period must be deposited in a trust account from which withdrawals may be made only in accordance with restrictions imposed by the court. An order placing the lawyer on interim probation under this subdivision may preclude the lawyer from accepting new cases either immediately or during a time specified in the order and may require that the lawyer deposit any fees paid to the lawyer

during a specified time period into a trust account from which withdrawals may be made only in accordance with restrictions imposed by the order.

(5) *Hearings on Issues Raised in Petitions for Interim Probation.* Once the Supreme Court of Florida has granted a petition for interim probation under this rule, the referee appointed by the court will hear the matter in the same manner as provided in rule 3-7.6, except that the referee will hear the matter after the lawyer charged has answered the charges in the petition for interim probation or when the time has expired for filing an answer. The referee will issue a final report and recommendation in an electronic format approved by the supreme court within 90 days of appointment. If the time limit specified in this subdivision is not met, that portion of an emergency order imposing an interim probation will be automatically dissolved, except on order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken.

(6) *Review by the Supreme Court of Florida.* The Supreme Court of Florida will review and act on the referee's findings and recommendations regarding interim probations on receipt of the referee's report. Briefing schedules following the petition for review are as set forth in subchapter 3-7 of these rules.

(c) Trust Accounts.

(1) *Effect of Order Restricting Lawyer Trust Account.* Any order of emergency suspension, ~~or interim probation, or interim placement on the inactive list~~ that restricts the ~~attorney~~lawyer in maintaining a trust account will be served on the respondent and any bank or other financial institution maintaining an account against which the respondent may make withdrawals. The order ~~serves as an injunction to prevent~~enjoins the bank or financial institution from making further payment from the trust account or accounts on any obligation, except in accordance

with restrictions imposed by the court through subsequent orders issued by a court-appointed referee. Bar counsel will serve a copy of the Supreme Court of Florida's order freezing a lawyer's trust account via first class mail on any bank in which the respondent's trust account is held.

(2) Appointment of Referee. The Supreme Court of Florida will promptly appoint or direct the appointment of a referee on determination that funds have been misappropriated from a lawyer's trust account as provided above.

(13) Referee's Authorization and Claims to Trust Funds. The court's order appointing a referee under this rule may authorize the referee to determine entitlement to funds in the frozen trust account. Any client or third party claiming to be ~~entitled~~ entitlement to funds in the frozen trust account must file a petition requesting release of frozen trust account funds with the referee appointed in the case, accompanied by proof of entitlement to the funds.

(24) Notice by Bar. ~~Bar counsel and bar auditors~~ The bar will provide information to the appointed referee from bar audits and other existing information regarding persons claiming ~~ownership of entitlement to~~ frozen trust account funds. The bar will notify persons known to bar staff in writing via regular first class mail of their possible interest in funds contained in the frozen trust account. The notices will include a copy of the form of a petition requesting release of frozen trust account funds to be filed with the referee and instructions for completing the form. The bar will publish in the local county or city newspaper published where the lawyer practiced before suspension a notice informing the public that the lawyer's trust account has been frozen and those persons with claims on the funds should contact listed bar counsel within 30 days after publication whenever possible.

(5) (A) ~~If there are no responses to the notices mailed and published by the bar within 90 days from the date of the notice~~

~~or if the amount in the frozen trust account is over \$100,000, a receiver may be appointed by the~~Appointment and Payment of Receiver. The referee may appoint a receiver to determine the persons rightfully entitled to the frozen trust account funds if there are no responses to the notices mailed and published by the bar within 90 days from the date of the notice or if the amount in the frozen trust account is over \$100,000. The receiver will be paid from the corpus of the trust funds unless the referee orders otherwise.

~~(6) Summary Proceedings. A referee will determine who is entitled to funds in the frozen trust account, unless~~The referee will unfreeze trust account funds if the amount in the frozen trust account is \$5,000 or less and no persons with potential entitlement to frozen trust account funds respond to the bar's mailed or published notices within 90 days from the date of the notice.~~In that event, the funds will be unfrozen.~~

~~(d) Referee Review of Frozen Trust Account Petitions.~~ (7) Referee Review of Frozen Trust Account Petitions. The referee determines when and how to pay the claim of any person entitled to funds in the frozen trust account after reviewing the bar's audit report, the lawyer's trust account records, the petitions filed, or the receiver's recommendations. The referee may hold a hearing if the bar's audit report or other reliable evidence shows that funds have been stolen or misappropriated from the lawyer's trust account. Subchapter 3-7 will not apply to a referee hearing under this rule. No pleadings may be filed other than petitions requesting release of frozen trust account funds. The parties to this referee proceeding are those persons filing a petition requesting release of frozen trust account funds. The bar is not a party to the proceeding. The referee's order is the final order in the matter unless one of the parties petitions for review of the referee's order to the Supreme Court of Florida. The sole issue before the referee is determination of ~~ownership of entitlement to~~ the frozen trust account funds. The referee determines the percentage of monies missing from the

respondent's trust account and the amounts owing to those petitioners requesting release of frozen trust account funds. The referee will order a pro rata distribution if there are insufficient funds in the account to pay all claims in full. ~~The referee's final order is subject only to direct petition for review by a party claiming an ownership interest in the frozen trust funds. The petition for review must be filed within 60 days of the referee's final order. The schedule for filing of briefs in the appellate process is as set forth in subchapter 3-7 of these rules.~~

~~(e) Separate Funds in Frozen Trust Accounts.~~ (8) *Separate Funds in Frozen Trust Accounts.* The referee will order return of any separate funds to their rightful owner(s) in full on the filing of a petition requesting release of frozen trust account funds with proof of entitlement to the funds. Separate funds are monies deposited into the respondent's trust account after the misappropriation, which are not affected by the misappropriation, and funds that have been placed into a separate segregated individual trust account under the individual client's tax identification number.

(9) *Review by Supreme Court of Florida.* The referee's final order is subject only to direct petition for review by a party claiming entitlement to the frozen trust account funds. The petition for review must be filed within 60 days of the referee's final order. Briefing schedules after the petition for review is filed are set forth in subchapter 3-7 of these rules.

~~(f) New Cases and Existing Clients.~~ Any order of emergency suspension issued under this rule immediately precludes the lawyer from accepting any new cases and, unless otherwise ordered, permits the lawyer to continue to represent existing clients for only the first 30 days after issuance of an emergency order. Any fees paid to the suspended lawyer during the 30-day period must be deposited in a trust account from which withdrawals may be made only in accordance with restrictions imposed by the court.

~~(g) Motions for Dissolution.~~ ~~The lawyer may move at any time for to dissolve or amend an emergency order by motion filed with the Supreme Court of Florida, unless the bar has demonstrated, through a hearing or trial, the likelihood of prevailing on the merits on any of the underlying violations of the Rules Regulating The Florida Bar. The lawyer must serve a copy of the motion on bar counsel. The motion will not stay any other proceedings or applicable time limitations in the case and will immediately be assigned to a referee designated by the chief justice, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion. The filing of the motion will not stay the operation of an order of emergency suspension or interim probation entered under this rule.~~

~~(h) Appointment of Referee.~~ ~~On entry of an order of suspension or interim probation, as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee. On determination that funds have been misappropriated from a lawyer's trust account as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee.~~

~~(i) Hearing on Petition to Terminate or Modify Suspension.~~ ~~The referee will hear a motion to terminate or modify a suspension or interim probation imposed under this rule within 7 days of assignment and submit a report and recommendation to the Supreme Court of Florida within 7 days of the hearing date. The referee will recommend dissolution or amendment, whichever is appropriate, if the bar cannot demonstrate a likelihood of prevailing on the merits on at least 1 of the underlying violations of the Rules Regulating The Florida Bar that establishes that the respondent is causing great public harm.~~

~~(j) Successive Motions Prohibited.~~ ~~The Supreme Court of Florida will summarily dismiss any successive motions for dissolution that raise issues that were, or with due diligence could have been, raised in a prior motion.~~

~~(k) Review by the Supreme Court of Florida.~~ The Supreme Court of Florida will review and act on the referee's findings and recommendations regarding emergency suspensions and interim probations on receipt of the referee's report on the motion for dissolution or amendment. This subdivision does not apply to a referee's final order to determine ownership of funds in frozen trust accounts. These final orders of referee are reviewable by the Supreme Court of Florida only if a party timely files a petition for review under this rule. Briefing schedules following the petition for review are as set forth in subchapter 3-7 of these rules.

~~(l) Hearings on Issues Raised in Petitions for Emergency Suspension or Interim Probation and Sanctions.~~ Once the Supreme Court of Florida has granted a petition for emergency suspension or interim probation under this rule, the referee appointed by the court will hear the matter in the same manner as provided in rule 3-7.6, except that the referee will hear the matter after the lawyer charged has answered the charges in the petition for emergency suspension or interim probation or when the time has expired for filing an answer. The referee will issue a final report and recommendation within 90 days of appointment. If the time limit specified in this subdivision is not met, that portion of an emergency order imposing a suspension or interim probation will be automatically dissolved, except on order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken.

~~(md) Proceedings in the Supreme Court of Florida.~~ The Supreme Court of Florida will expedite consideration of the referee's report and recommendation regarding emergency suspension and interim probation. The chief justice will schedule oral argument as soon as practicable, if granted.

~~(ne) Waiver of Time Limits.~~ The respondent may, at any time, waive the time requirements set forth in this rule by written request made to and approved by the referee assigned to hear the matter.

RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS

(a) Authority of Board. The board of governors is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction.

(b) Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a finding of minor misconduct or by a finding of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs.

(c) Limitation on Diversion. A respondent who has been the subject of a prior diversion is not eligible for diversion for the same type of rule violation for a period of 5 years after the earlier diversion. ~~However, a~~ respondent who has been the subject of a prior diversion and then is alleged to have violated a completely different type of rule at least 1 year after the initial diversion, will be eligible for a practice and professionalism enhancement program.

(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar ~~shall~~will not offer a respondent the opportunity to divert a disciplinary case that is pending at staff or grievance committee level investigations to a practice and professionalism enhancement program unless staff counsel, the grievance committee chair, and the designated reviewer concur.

(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation ~~shall~~must state the practice and professionalism enhancement program(s) to which the respondent ~~shall~~will be diverted, ~~shall state the general purpose for the diversion, and the costs thereof to be paid by the respondent.~~

(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the bar must serve the recommendation ~~shall be served on the respondent,~~ who may accept or reject a diversion recommendation in the same manner as provided for review of recommendations of minor misconduct. The respondent ~~shall~~does not have the right to reject any specific requirement of a practice and professionalism enhancement program.

(g) Effect of Rejection of Recommendation by Respondent. ~~In the event that~~If a respondent rejects a diversion recommendation the matter ~~shall~~will be returned for further proceedings under these rules.

(h) Diversion Before Formal Complaint is Filed. If a respondent states a desire to plead guilty before a formal complaint is filed, bar counsel consults established board guidelines for discipline and confers with the designated reviewer. If bar counsel and the designated reviewer reject the proposed consent judgment, the matter is not referred to the board of governors. If the designated reviewer approves the proposed consent judgment, bar counsel advises the respondent that the designated reviewer will recommend approval of the respondent's written plea, and the matter is placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel notifies the respondent and files all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel prepares and files a complaint as provided elsewhere in these rules.

(hi) Diversion at Trial Level.

(1) *Agreement of the Parties.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional

pleas provided elsewhere in these rules ~~shall~~ apply to diversion at the trial level.

(2) *After Submission of Evidence.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of guilt, the referee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than minor misconduct.

(3) *Costs of Practice and Professionalism Enhancement Program.* A referee's recommendation of diversion to a practice and professionalism enhancement program ~~shall~~must state the costs ~~thereof~~ to be paid by the respondent.

(4) *Appeal of Diversion Recommendation.* The respondent and the bar ~~shall~~ have the right to appeal a referee's recommendation of diversion, except ~~in the case of~~ for a diversion agreed to under subdivision (h)(1).

(5) *Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program.* Nothing in this rule ~~shall preclude~~ a referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

(ij) Effect of Diversion. When the recommendation of diversion becomes final, the respondent ~~shall~~must enter the practice and professionalism enhancement program(s) and complete their requirements thereof. ~~Upon respondent's entry into a practice and professionalism enhancement program, the~~ The bar ~~shall~~will terminate its investigation into the matter and close its disciplinary files ~~shall be closed indicating the diversion on a respondent's entry into a practice and professionalism enhancement program.~~ Diversion into the practice and professionalism enhancement program ~~shall not constitute~~ is not a disciplinary sanction.

(jk) Effect of Completion of the Practice and Professionalism Enhancement Program. If a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, the bar's file shall remain closed if a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent is diverted.

(kl) Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, including the payment of costs thereof, the bar may reopen its disciplinary file and conduct further proceedings under these rules if a respondent fails to complete all requirements of the practice and professionalism enhancements program(s) to which the respondent is diverted, including payment of associated costs. Failure to complete the practice and professionalism enhancement program shall be considered as an aggravating factor when imposing a disciplinary sanction.

(lm) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar shall annually will determine the costs of practice and professionalism enhancement programs and publish the amount of the costs thereof that shall be assessed against and paid by a respondent.

Comment

As to subdivision (c) of 3-5.3, a lawyer who agreed to attend the Advertising Workshop in 1 year would not be eligible for ~~another~~ such diversion for an advertising violation for a period of 5 years following the first diversion. However, that same lawyer would be eligible to attend the Advertising Workshop 1 year and then attend a Trust Account Workshop for a completely different violation 1 year after the first diversion is completed.

**3-6. EMPLOYMENT OF CERTAIN ATTORNEYS~~LAWYERS~~ OR
FORMER ATTORNEYS~~LAWYERS~~
RULE 3-6.1 GENERALLY**

(a) Authorization and Application. Except as limited in this rule, persons or entities providing legal services may employ ~~suspended lawyers, lawyers on the inactive list due to incapacity, and former lawyers who have been disbarred or whose disciplinary resignations or disciplinary revocations have been granted by the Supreme Court of Florida (for purposes of this rule these lawyers and former lawyers are referred to as “individual(s) subject to this rule”)~~ certain lawyers or former lawyers to perform those services that may ethically be performed by nonlawyers employed by authorized business entities. For purposes of this rule:

(1) these lawyers and former lawyers are referred to as “individual(s) subject to this rule”;

(2) "individuals subject to this rule" includes lawyers who are on the inactive list due to incapacity or who are suspended or have been disbarred by a court or other authorized disciplinary agency of this or another jurisdiction;

(3) the term "disbarred" includes disciplinary resignation and revocation, permanent retirement in lieu of discipline, or their substantial equivalents; and

(4) An individual subject to this rule is considered employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor, or is engaged to provide services to the client arising from or related to the client's legal representation at the recommendation of the entity or any of its members or employees.

(b) Employment by Former Subordinates Prohibited. An individual subject to this rule may not be employed or supervised by a lawyer whom the individual subject to this rule employed or

supervised before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation order.

(c) Notice of Employment Required. The lawyer or entity employing any individual who will be subject to this rule must provide The Florida Bar with a notice of employment and a detailed description of the intended services to be provided by the individual subject to this rule before employment starts.

(d) Prohibited Conduct.

(1) *Client Contact.* Individuals subject to this rule must not have contact (including engaging in communication in any manner) with any client.

(2) *Trust Funds or Property.* Individuals subject to this rule must not receive, disburse, or otherwise handle trust funds or property as defined in chapter 5 of these rules. Individuals subject to this rule must not act as fiduciaries for any funds or property of their clients or former clients, their employers' clients or former clients, or the clients or former clients of any entity in which ~~their~~an employer is a beneficial owner.

(3) *Practice of Law.* Individuals subject to this rule must not engage in conduct that constitutes the practice of law and must not hold themselves out as being eligible to do so.

(e) Quarterly Reports by Individual and Employer Required. The individual subject to this rule and employer must submit sworn information reports to The Florida Bar. These reports must be filed quarterly, based on the calendar year, and include statements that no aspect of the work of the individual subject to this rule has involved the unlicensed practice of law, that the individual subject to this rule has had no client contact, that the individual subject to this rule did not receive, disburse, or otherwise handle trust funds or property, and that the individual subject to this rule is not being supervised by a lawyer whom the individual subject to this rule supervised within the 3 years immediately before the date of the

suspension, disbarment, disciplinary resignation, or disciplinary revocation order.

(f) Supervising Lawyer. An individual subject to this rule must be supervised by a member of The Florida Bar in good standing and eligible to practice law in Florida who is employed full-time by the entity that employs the individual subject to this rule and is actively engaged in the supervision of the individual subject to this rule in all aspects of the individual's employment.

Comment

Trust funds are defined in chapter 5 of these rules and include, but are not limited to, funds held in trust for clients or third parties in connection with legal representation in escrow, estate, probate, trustee and guardianship accounts. The Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties with an interest in the escrowed funds whether held in the lawyer's trust account or a separate escrow or fiduciary account. *See, Fla. Bar v. Marrero*, 157 So.3d 1020 (Fla. 2015); *Fla. Bar v. Hines*, 39 So.3d 1196 (Fla. 2010). Individuals subject to this rule are prohibited from receiving, disbursing, or handling trust funds or property or acting as a fiduciary regarding funds or property of the current or former clients of these individuals, the entities employing them, or any other entity in which the employer is a beneficial owner.

3-7. PROCEDURES

RULE 3-7.1 CONFIDENTIALITY

(a) Scope of Confidentiality. All records including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those disciplinary matters conducted in circuit courts, are property of The Florida Bar. All of those matters are confidential and will not be disclosed except as provided in these rules. When disclosure is permitted under these rules, it will be limited to information concerning the status of the proceedings

and any information that is part of the public record as defined in these rules.

Unless otherwise ordered by this court or the referee in proceedings under these rules, nothing in these rules prohibits the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules, or from disclosing any documents or correspondence served on or provided to those persons except where disclosure is prohibited in chapter 4 of these rules or by statutes and caselaw regarding attorney-client privilege.

(1) *Pending Investigations.* Disciplinary matters pending at the initial investigatory and grievance committee levels are treated as confidential by The Florida Bar, except as provided in rules 3-7.1(e) and (k).

(2) *Minor Misconduct Cases.* Any case ~~in which~~that has been concluded by a finding of minor misconduct ~~has been entered by action of the grievance committee or board~~ is public information.

(3) *Probable Cause Cases.* Any disciplinary case ~~in which~~that has a finding of probable cause for further disciplinary proceedings ~~has been entered~~ is public information. ~~For purposes of this subdivision, a finding of probable cause is deemed in those cases authorized by rule 3-3.2(ab), for the filing of a formal complaint without the requirement of a finding of probable cause. Cases in which a formal complaint has been filed under rule 3-3.2(b) without a finding of probable cause are public on filing the complaint.~~

(4) *No Probable Cause Cases.* Any disciplinary case that has been concluded by a finding of no probable cause for further disciplinary proceedings is public information.

(5) *Diversion or Referral to Grievance Mediation and Fee Arbitration Program.* Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation

and fee arbitration program is public information ~~on the entry of such a recommendation.~~

(6) *Contempt Cases.* Contempt proceedings authorized elsewhere in these rules are public information even if the underlying disciplinary matter is confidential as defined in these rules.

(7) *Incapacity Not Involving Misconduct.* Proceedings for placement on the inactive list for incapacity not involving misconduct are public information on the filing of the petition with the Supreme Court of Florida.

(8) *Petition for Emergency Suspension or Probation.* Proceedings seeking a petition for emergency suspension or probation are public information.

(9) *Proceedings on Determination or Adjudication of Guilt of Criminal Misconduct.* Proceedings on determination or adjudication of guilt of criminal misconduct, as provided elsewhere in these rules, are public information.

(10) *Professional Misconduct in Foreign Jurisdiction.* Proceedings based on disciplinary sanctions entered by a foreign court or other authorized disciplinary agency, as provided elsewhere in these rules, are public information.

(11) *Reinstatement Proceedings.* Reinstatement proceedings, as provided elsewhere in these rules, are public information.

(12) *Disciplinary Resignations and Disciplinary Revocations.* Proceedings involving petitions for disciplinary resignation or for disciplinary revocation as provided elsewhere in these rules, are public information.

(b) Public Record. The public record consists of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports,

correspondence, papers, recordings, or transcripts of hearings furnished to, served on, or received from the respondent or the complainant.

(c) Circuit Court Proceedings. Proceedings under rule 3-3.5 are public information.

(d) Limitations on Disclosure. Any material provided to The Florida Bar that is confidential under applicable law will remain confidential and will not be disclosed except as authorized by the applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida.

The procedure for maintaining the required confidentiality is set forth in subdivision (m) below.

(e) Response to Inquiry. Authorized representatives of The Florida Bar will respond to specific inquiries concerning matters that are in the public domain, but otherwise confidential under the rules, by acknowledging the status of the proceedings.

(f) Notice to Law Firms. When a disciplinary file is opened the respondent must disclose to the respondent's current law firm and, if different, the respondent's law firm at the time of the act or acts giving rise to the complaint, that a disciplinary file has been opened. Disclosure must be in writing and in the following form:

A complaint of unethical conduct against me has been filed with The Florida Bar. The nature of the allegations are _____. This notice is provided under rule 3-7.1(f) of the Rules Regulating The Florida Bar.

The notice must be provided within 15 days of notice that a disciplinary file has been opened and a copy of the above notice must be served on The Florida Bar.

(g) Production of Disciplinary Records Pursuant to Subpoena. The Florida Bar, under a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the public record, even if the disciplinary proceeding is confidential under these rules. The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(h) Notice to Judges. Any judge of a court of record, on inquiry of the judge, will be advised and, absent an inquiry, may be advised as to the status of a confidential disciplinary case and may be provided with a copy of documents in the file that would be part of the public record if the case was not confidential. The judge must maintain the records' confidentiality and not otherwise disclose the status of the case.

(i) Evidence of Crime. The confidential nature of these proceedings does not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

(j) Chemical Dependency and Psychological Treatment. That a lawyer, judge, or justice has voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems is confidential and will not be admitted as evidence in disciplinary proceedings under these rules unless agreed to by the lawyer, judge, or justice who sought, received, or accepted the treatment.

For purposes of this subdivision, a lawyer, judge, or justice is deemed to have voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems if the lawyer, judge, or justice was not under compulsion of law or rule to do so, or if the treatment is not a part of conditional admission to The Florida Bar or of a disciplinary sanction imposed under these rules.

It is the purpose of this subdivision to encourage lawyers, judges, and justices to voluntarily seek advice, counsel, and treatment available to lawyers, judges, and justices, without fear

that the fact it is sought or rendered will ~~or might cause embarrassment in any future disciplinary matter~~ be admitted as evidence in disciplinary proceedings under these rules.

(k) Response to False or Misleading Statements. If public statements that are false or misleading are made about any otherwise confidential disciplinary case, The Florida Bar may disclose all information necessary to correct such false or misleading statements.

(l) Disclosure by Waiver of Respondent. On written waiver executed by a respondent, The Florida Bar may disclose the status of otherwise confidential disciplinary proceedings and provide copies of the public record to:

(1) the Florida Board of Bar Examiners or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of an applicant for admission to practice law in that jurisdiction; or

(2) Florida judicial nominating commissions or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of a candidate for judicial office; or

(3) The Florida Bar Board of Legal Specialization and Education and any of its certification committees for the purpose of evaluating the character and fitness of a candidate for board certification or recertification; or

(4) the governor of the State of Florida for the purpose of evaluating the character and fitness of a nominee to judicial office.

(m) Maintaining Confidentiality Required by Rule or Law. The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Gen. Prac. &

Jud. Admin. 2.420. It will be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that the documents or information contain material that is exempt from disclosure under applicable rule or law and request that exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES

(a) Screening of Inquiries. ~~Prior to opening a disciplinary file, bar~~Bar ~~counsel shall~~must ~~review the~~each written ~~inquiry made and~~ determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline before opening a disciplinary file. ~~If bar~~ ~~counsel determines that the facts allege a fee dispute which, if~~ ~~proven, would probably not constitute a clear violation under these~~ ~~rules, bar~~Bar ~~counsel may, with the consent of the complainant and~~ ~~respondent, refer the matter to The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14~~ with the consent of the complaining witness and respondent if bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under these rules. ~~If~~Bar ~~counsel may decline to pursue the inquiry if~~ ~~bar counsel determines that~~ the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline; ~~bar counsel may decline to pursue the inquiry.~~ A decision by bar counsel not to pursue an inquiry ~~shall~~does not preclude further action or review under the Rules Regulating The Florida Bar. ~~The~~Bar ~~counsel must notify complainant~~the complaining witness and respondent ~~shall be notified of a decision not to pursue an~~ ~~inquiry and shall be given~~and the reasons bar counsel closed the inquiry~~therefor.~~

(b) Complaint Processing and Bar Counsel Investigation. ~~If bar counsel decides to pursue an inquiry, Bar counsel will open a disciplinary file shall be opened and the inquiry shall be considered as a complaint, if the form requirement of subdivision (c) is met if bar counsel determines further investigation is warranted. Bar counsel shall~~must investigate the allegations contained in ~~the~~any written complaint that is signed under oath as provided in this rule. Bar counsel may open a disciplinary file and investigate when bar counsel possesses information that indicates a bar member may have violated any Rules Regulating The Florida Bar. Bar counsel may obtain subpoenas for witness attendance and the production of documentary evidence in accordance with Rule 3-7.11.

(c) Form for Complaints. All complaints must be in writing and signed under penalty of perjury, except those initiated by The Florida Bar, shall be in writing and under oath. Complaints may be signed electronically and submitted to the bar electronically. The complaint ~~shall~~must contain a statement providing:

Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.

(d) Dismissal of Disciplinary Cases. Bar counsel may dismiss disciplinary cases if, ~~after complete investigation, bar counsel determines, after complete investigation, that the facts show that the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel shall~~does not preclude further action or review under the Rules Regulating The Florida Bar. ~~Nothing in these rules shall preclude bar~~Bar counsel from obtaining may dismiss a case with or without a letter of advice with the concurrence of the grievance committee chair on the dismissal of a case or on dismissal of the case with issuance of a letter of advice as described elsewhere in these Rules Regulating The Florida Bar. If a disciplinary case is dismissed, the complainant shall be notified of the dismissal and shall be given the reasons thereforBar counsel must notify the complainant of the dismissal and reasons for dismissal.

(e) Diversion to Practice and Professionalism Enhancement Programs. Bar counsel may recommend diversion of disciplinary cases as provided elsewhere in these rules if, after complete investigation, bar counsel determines that the facts show that the respondent's conduct did not constitute disciplinary violations more severe than minor misconduct.

(f) Referral to Grievance Committees. Bar counsel may refer disciplinary cases to a grievance committee for its further investigation or action as authorized elsewhere in these rules. Bar counsel may recommend specific action on a case referred to a grievance committee.

(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff. ~~When bar counsel does not pursue an inquiry or dismisses a disciplinary case, such action shall be~~ Bar counsel's closure of an inquiry or complaint is deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become public information in accordance with this subchapter.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. ~~When notice of a grievance committee hearing is sent to the respondent, such notice shall be accompanied by~~ The bar must provide a list of the grievance committee members with the notice of grievance committee hearing sent to the respondent.

(b) Complaint Filed With Grievance Committee. A grievance committee that receives a complaint received by a committee directly from a complainant shall be reported must report it to the appropriate bar counsel for docketing and assignment of a case number, unless the committee resolves the complaint within 10 days after receipt of the complaint. A written report to bar counsel ~~shall~~ must include the following information: complainant's name and address, respondent's name, date complaint received by committee, copy of complaint letter or summary of the oral

complaint made, and the name of the committee member assigned to the investigation. Formal investigation by a grievance committee may proceed after the matter has been referred to bar counsel for docketing.

(c) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by bar counsel, whether based upon a written complaint or not. The grievance committee may issue subpoenas in accordance with Rule 3-7.11.

(d) Conduct of Proceedings. The proceedings of grievance committees may be informal in nature and the committees ~~shall~~are not be-bound by the rules of evidence.

(e) No Delay for Civil or Criminal Proceedings. An investigation ~~shall~~may not be deferred or suspended without the approval of the ~~board~~appropriate designated reviewer, even though the respondent is made a party to civil litigation or is a defendant or is acquitted in a criminal action, ~~notwithstanding that either of such~~even if the proceedings involves the subject matter of the investigation.

(f) Counsel and Investigators. ~~Upon request of a grievance committee, staff~~Staff counsel may appoint a bar counsel or an investigator to assist the grievance committee in an investigation, at the committee's request. Bar counsel ~~shall~~will assist each grievance committee in carrying out its investigative and administrative duties and ~~shall~~will prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recommended discipline for minor misconduct, and letters of advice after no probable cause findings.

(g) Quorum, Panels, and Vote.

(1) *Quorum*. Three members of the committee, 2 of whom must be lawyers, ~~shall~~ constitute a quorum.

(2) *Panels*. The grievance committee may be divided into panels of not fewer than 3 members, at least 2/3 of whom must be lawyers. ~~Division of the~~ The grievance committee may be divided into panels shall only be upon concurrence of the designated reviewer and the chair of the grievance committee. ~~The 3-member panel shall~~ will elect 1 of its lawyer members to preside over the panel's actions. If the chair or vice-chair is a member of a ~~3-member~~ panel, the chair or vice-chair ~~shall be~~ is the presiding officer.

(3) *Vote*. All findings of probable cause and recommendations of guilt of minor misconduct ~~shall~~ must be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members. ~~There shall be~~ is no required minimum number of lawyer members voting in order to satisfy the requirements of this rule. The number of committee members voting for or against the committee report ~~shall~~ must be recorded. Minority reports may be filed. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and to produce evidence, as any other witness, unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. ~~At a reasonable time before any finding of probable cause or minor misconduct is made, the~~ The bar must advise the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated at a reasonable time before any finding of probable cause or minor misconduct is made. The bar must provide the respondent shall be provided with all materials considered by the committee and shall be given give the respondent

an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

(i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. ~~Unless it is found to be impractical by the chair of the grievance committee due to unreasonable delay or other good cause, the~~The complainant shall be granted~~has~~ the right to be present at any grievance committee hearing when the respondent is present before the committee, unless found impractical by the chair of the grievance committee for unreasonable delay or other good cause. ~~Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution, will excuse the completion of an investigation.~~The bar's investigation will be completed, regardless of whether the complaining witness is uncooperative, delays, or notifies the bar of settlement or compromise with the respondent or that the respondent has made restitution. The complaining witness ~~shall have~~has no right to appeal.

(j) Finding of No Probable Cause.

(1) *Authority of Grievance Committee.* A grievance committee may terminate an investigation by finding that no probable cause exists to believe ~~that~~ the respondent has violated these rules. The committee may issue a letter of advice to the respondent in connection with the finding of no probable cause.

(2) *Notice of Committee Action.* Bar counsel ~~shall~~must notify the respondent and complainant of the action of the committee.

(3) *Effect of No Probable Cause Finding.* A finding of no probable cause by a grievance committee ~~shall~~does not preclude the reopening of the case and further proceedings ~~therein.~~

(4) *Disposition of Committee Files.* ~~Upon the termination of the grievance committee's investigation, the committee's~~The

~~committee will forward its file shall be forwarded to bar counsel for disposition in accord with~~under established bar policy.

(k) Letter Reports in No Probable Cause Cases. ~~Upon a finding of no probable cause, bar~~Bar counsel will submit a letter report of ~~the~~a no probable cause finding to the complainant, presiding member, investigating member, and the respondent, including any appropriate documentation, ~~deemed appropriate by bar counsel and explaining why the complaint did not warrant further proceedings.~~ Letters of advice issued by a grievance committee in connection with findings of no probable cause ~~shall~~must be signed by the presiding member of the committee. Letter reports and letters of advice ~~shall~~do not constitute a disciplinary sanction.

(l) Preparation, Forwarding, and Review of Grievance Committee Complaints. If a grievance committee or the board of governors finds probable cause, the bar counsel assigned to the committee ~~shall~~must promptly prepare a record of its investigation and a formal complaint. The record before the committee ~~shall~~ consists of all reports, correspondence, papers, and/or recordings ~~furnished~~provided to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; ~~provided, however, that the.~~ The committee may retire into ~~private~~executive session to debate the issues involved and ~~to reach a decision as to~~decide the action to be taken. The formal complaint ~~shall~~must be approved by the member of the committee who presided in the proceeding. The board prescribes the form of formal complaints ~~shall be in such form as shall be prescribed by the board.~~ If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes ~~accordingly.~~ If bar counsel does not agree with the changes, the matter ~~shall be~~is referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or is not returned to the grievance committee for further action, the

formal complaint ~~shall~~must be promptly forwarded to and reviewed by staff counsel. Staff counsel ~~shall~~must file the formal complaint and ~~furnish~~provide a copy to the respondent. Staff counsel ~~shall~~must request the Chief Justice of the Supreme Court of Florida to assign a referee or to order the chief judge of the appropriate circuit to assign a referee to try the ~~cause~~case. A copy of the record ~~shall~~will be made available to the respondent at the respondent's expense.

If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action.

(m) Recommendation of Admonishment for Minor Misconduct. If the committee recommends an admonishment for minor misconduct, bar counsel drafts the grievance committee report ~~shall be drafted by bar counsel, and the presiding member signs it and signed by the presiding member~~. The committee report need only include: (1) the committee's recommendations regarding the admonishment, revocation of certification, and conditions of recertification; (2) the committee's recommendation as to the method of administration of the admonishment; (3) a summary of any additional charges that will be dismissed if the admonishment is approved; (4) any comment on mitigating, aggravating, or evidentiary matters ~~that the committee believes will be helpful to the board in passing upon the admonishment recommendation;~~ and (5) an admission of minor misconduct signed by the respondent, if the respondent has admitted guilt to minor misconduct. No record need be submitted with ~~such a~~the report. After the presiding member signs the grievance committee report, the report ~~shall be~~is returned to bar counsel. The report recommending an admonishment ~~shall~~must be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy any defect ~~therein~~, or if the designated reviewer does not present

the ~~same~~report to the disciplinary review committee for action by the board, bar counsel will then serve the report ~~shall then be served on the respondent by bar counsel.~~

(n) Rejection of Admonishment. The order of admonishment ~~shall become~~final unless rejected by the respondent within ~~15~~30 days after service upon the respondent. If rejected by the respondent, ~~the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel~~will prepare a formal complaint as in the case of a finding of probable cause.

(o) Recommendation of Diversion to Remedial Programs. A grievance committee may recommend, as an alternative to issuing a finding of minor misconduct or no probable cause with a letter of advice, diversion of the disciplinary case to a practice and professionalism enhancement program as provided elsewhere in these rules. A respondent may reject the diversion recommendation in the same manner as provided in the rules applicable to rejection of findings of minor misconduct. In the event that a respondent rejects a recommendation of diversion, the matter ~~shall be~~is returned to the committee for further proceedings.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees.

(1) *Appointment.* The chief justice has the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. These appointees ordinarily must be active county or circuit judges, but the chief justice may appoint retired judges.

(2) *Minimum Qualifications.* To be eligible for appointment as a referee under this rule, the judge must have previously served as a judicial referee in proceedings instituted under these rules before February 1, 2010, at 12:01 a.m., or must have received

the referee training materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed.

(b) Trial by Referee. Proceedings after assignment of a referee ~~on the bar's filing a formal complaint~~ are adversary proceedings conducted under this rule.

(c) Pretrial Conference. The referee must conduct a pretrial conference within 60 days of the order assigning the case to the referee. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee must enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial must be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever is designated by the Supreme Court of Florida; provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial will be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar must be styled “The Florida Bar, Complainant, v.(name of respondent)....., Respondent,” and “In The Supreme Court of Florida (Before a Referee).”

(f) Nature of Proceedings.

(1) *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery.* Discovery is available to the parties in accordance with the Florida Rules of Civil Procedure.

(3) *Mediation.* Civil mediation is not available to parties. The parties may be referred to grievance mediation under chapter 14 as permitted by these rules and the grievance mediation policies adopted under these rules.

(g) Bar Counsel. Bar counsel must investigate as is necessary and prepare and prosecute with utmost diligence any case assigned.

(h) Pleadings. Pleadings may be informal and must comply with the following.

(1) *Complaint; Consolidation and Severance.*

(A) Filing. The complaint must be filed in the Supreme Court of Florida.

(B) Content. The complaint must set forth the particular act or acts of conduct for which the ~~Florida Bar member~~respondent is sought to be disciplined.

(C) Joinder of Charges and Respondents; Severance. A complaint may embrace any number of charges against 1 or more respondents, and charges may be against any 1 or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.

(2) *Answer and Motion.* The respondent must answer the complaint. The answer must include all of the respondent's defenses, except that the respondent may challenge the sufficiency of the complaint and jurisdiction of the forum in a separate motion. The respondent's answer may invoke any proper privilege, immunity, or disability available to the respondent. All of the respondent's pleadings must be filed within 20 days of service of a copy of the complaint on the respondent.

(3) *Reply*. The bar may reply to the respondent's answer within 10 days of service on bar counsel if the respondent's answer contains any new issue or affirmative defense. Failure to reply to the respondent's answer does not prejudice the bar. All affirmative allegations in the respondent's answer are considered as denied by the bar.

(4) *Disposition of Motions*. Hearings on motions may be deferred until the final hearing, and, whenever heard, rulings on any motions may be reserved until termination of the final hearing.

(5) *Filing and Service of Pleadings*.

(A) Before Appointment of Referee. Any pleadings filed in a case before appointment of a referee must be filed with the Supreme Court of Florida in an electronic format approved by the supreme court and must include a certificate of service showing parties on whom service of copies has been made. The Supreme Court of Florida notifies the parties of the referee's appointment and forwards all pleadings filed with the court to the referee for action on appointment of the referee.

(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee must be filed with the referee in an electronic format approved by the supreme court and must include a certificate of service showing service of a copy on the bar's staff counsel and bar counsel and on all interested parties to the proceedings.

(C) Subpoenas for witness attendance and production of documentary evidence before a referee must be issued by the referee and must be served either in the manner provided by law for the service of process or by an investigator employed by ~~The Florida Bar~~ the bar.

(6) *Amendment.* The referee may allow pleadings to be amended. If the referee permits pleadings to be amended, the referee must allow a reasonable time for response.

(7) *Expediting the Trial.* The referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule if the referee determines that the proceedings should be expedited to serve the public interest.

(8) *Disqualification of Referee.* A referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of a disqualification, the chief judge of the appropriate circuit will appoint a successor referee from that same circuit.

(i) Notice of Final Hearing. Either party or the referee may set the cause for trial with at least 10 days notice. The trial will be held as soon as possible after 10 days from the filing of the respondent's answer or, if no answer is filed, from the date the answer is due.

(j) The Respondent. The bar may call the respondent as a witness to make specific and complete disclosure of all matters material to the issues unless the respondent claims a privilege or right properly available under applicable federal or state law. The respondent may be cited for contempt of the court if subpoenaed to give testimony or produce documents and refuses to give testimony or produce documents or, having been duly sworn to testify, refuses to answer any proper question.

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding and has no rights other than those of any other witness. The referee may grant the complaining witness the right to be present at any hearing when the respondent is also present after the complaining witness has testified during the case in chief, unless the complaining witness' presence is found to be impractical due to unreasonable delay or other good cause. A

complaining witness may be called on to testify and produce evidence as any other witness. The bar may proceed with trial regardless of a ~~complainant's~~complaining witness' lack of cooperation or any settlement, compromise, or restitution between the respondent and ~~complainant~~complaining witness. The complaining witness has no right to appeal.

(l) Parol Evidence. Evidence, other than that contained in a written lawyer-client contract, may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except other competent evidence may be used only if necessary to resolve issues of excessive fees or excessive costs.

(m) Referee's Report.

(1) *Timing of Report.* The referee must enter a report as part of the record within the later of 30 days after the conclusion of the trial, 10 days after the referee receives the transcripts of all hearings, or as extended by the chief justice for good cause. Failure to enter the report in the time prescribed does not deprive the referee of jurisdiction.

(2) *Contents of Report.* The referee's report must include:

(A) a finding of fact for each item of misconduct of which the respondent is charged, which has the same presumption of correctness as the judgment of the trier of fact in a civil proceeding;

(B) recommendations whether the respondent should be found guilty of misconduct justifying disciplinary measures;

(C) recommendations on the disciplinary measures to be applied;

(D) the respondent's disciplinary history on record with the bar's executive director or that otherwise becomes known

to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

(E) a statement of costs incurred and recommendations as to the manner in which those costs should be taxed.

(3) *Filing of Report.* The referee must file the report and record of proceedings with the Supreme Court of Florida in an electronic format approved by the supreme court. The referee must serve copies of the report on the parties including staff counsel. Bar counsel will make a copy of the record, as filed, available to other parties on request and payment of the actual costs of reproduction. The referee may not file the report of referee and record until the time for filing a motion to assess costs has expired and no motion has been filed or, if the motion was timely filed, until the motion has been considered and a ruling entered.

(n) The Record.

(1) *Recording of Testimony.* A court reporter must attend and record all testimony at all hearings at which testimony is presented. Transcripts of testimony are not required to be filed in the matter. Any party requesting transcripts be filed in the matter must pay the cost of transcription directly to the court reporter. ~~Transcripts ordered filed by the referee~~ If the referee orders that transcripts be filed, they are subject to assessment as costs as elsewhere provided in these rules.

(2) *Contents.* The record includes all items properly filed in the cause, including pleadings; recorded testimony, if transcribed; exhibits in evidence; and the report of the referee.

(3) *Preparation and Filing.* The referee, with the assistance of bar counsel, prepares the record, certifies that the record is

complete, serves a copy of the index of the record on the respondent and The Florida Bar, and files the record with the office of the clerk of the Supreme Court of Florida in an electronic format approved by the supreme court.

(4) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(o) Plea of Guilty by Respondent. At any time during the progress of disciplinary proceedings, a respondent may tender a plea of guilty.

(1) *Before Filing of Complaint.* A guilty plea tendered before filing of a complaint by staff counsel must be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint.* The respondent may enter a written guilty plea after a complaint has been filed in writing with the referee to whom the cause has been assigned for trial. The referee may take testimony on the guilty plea, then must enter a report as otherwise provided.

(3) *Unconditional.* An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure.* All guilty plea procedures are as elsewhere provided in these rules, except if they conflict with this rule.

(p) Cost of Review or Reproduction.

(1) The bar's charge for reproduction for the purposes of these rules is determined and published annually by the executive director. 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 reproduced.

(2) When the bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in the bar's possession, the bar may decline to reproduce the documents in the bar's offices and must inform the requesting person of the following options:

(A) purchase of the transcripts from the court reporter service that produced them;

(B) purchase of the documents from the third party from whom the bar received them; or

(C) designation of a commercial photocopy service to which the bar will deliver the original documents to be copied, at the requesting party's expense, if the photocopy service agrees to preserve and return the original documents and not release them to any person without the bar's consent.

(q) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee;

(H) travel and out-of-pocket expenses of counsel in the proceedings, including of the respondent if acting as counsel; and

(I) an administrative fee in the amount of \$1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee has discretion to award costs and, absent an abuse of discretion, the court will not reverse the referee's award.

(3) *Assessment of Bar Costs.* The referee may assess the bar's costs against the respondent when the bar is successful in whole or in part, unless the respondent shows that the costs of the bar were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Respondent's Costs.* The referee may assess the respondent's costs against the bar if the bar is unsuccessful in prosecuting a matter and the bar raised no justiciable issue of either law or fact.

(5) *Time for Filing Motion to Assess Costs.* A party must file a statement of costs incurred in a referee proceeding and a request for payment of same within 15 days after written notice by the referee that the report of referee has been completed or at the time that a guilty plea for consent judgment is filed. The party from whom costs are sought may file an objection within 10 days from the date the motion was filed. Failure to timely file a motion without good cause waives of the right to request reimbursement of costs or to object to a request for reimbursement of costs. This subdivision does not require the filing of a motion to assess costs before the referee when doing so is not appropriate.

Court Comment

A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.

Comment

Provisions for assessment of costs in proceedings before the Supreme Court of Florida are addressed in rule 3-7.7.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All ~~reports of a referee~~ referee reports and all judgments entered in proceedings under these rules are subject to review by the Supreme Court of Florida in the following manner:

(a) Right of Review.

(1) Any party to a proceeding may request review of all or part of a referee's report ~~of a referee~~ or judgment entered under these rules.

(2) The Supreme Court of Florida reviews all referee reports and judgments ~~of referees~~ recommending probation, public reprimand, suspension, disbarment, or revocation pending disciplinary proceedings.

(3) A referee's report that does not recommend probation, public reprimand, suspension, disbarment, or revocation pending disciplinary proceedings, is final if not appealed.

(b) Appointment of Bar Counsel. The board or staff counsel, if authorized by the board, may appoint new or additional bar counsel to represent The Florida Bar on any review.

(c) Procedure for Review. The Supreme Court of Florida will conduct its review using the following procedures:

(1) *Notice of Intent to Seek Review of Report of Referee.* A party to a bar disciplinary proceeding ~~seeking review of a report of referee must give~~file notice of ~~that intent to seek review of a referee's report, specifying any portion of the referee's report to be reviewed,~~ within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida in an electronic format approved by the Supreme Court of Florida. The Florida Bar will provide prompt written notice of the board's action, if any, to the respondent. ~~The proceeding begins by filing with the Supreme Court of Florida notice of intent to seek review of a report of referee, specifying those portions of the report of a referee sought to be reviewed. Within 20 days after service of the notice of intent to seek review,~~The opposing party may file a cross-notice for review specifying any additional portion of the referee's report for which that party seeks review within 20 days after service of the notice. The filing of the notice or cross-notice to seek review is jurisdictional as to a review to be procured as a matter of, and the party who fails to timely file notice loses supreme court review as a right, ~~but the~~ The court may, in its discretion, consider a late-filed notice or cross-notice on a showing of good cause.

(2) *Record on Review.* The report and record filed by the referee ~~shall~~ constitute the record on review. If hearings were held at which testimony was heard, but no transcripts were filed in the matter, the party seeking review must order preparation of all transcripts, file the transcripts with the court, and serve copies on the opposing party on or before the time of filing of the initial brief, as provided elsewhere in this rule. The party seeking review must pay the court reporter cost of transcript preparation. Failure to timely file and serve transcripts may be cause to dismiss the party's petition for review.

(3) *Briefs.* The party first seeking review must file a brief in support of the notice of intent to seek review within 30 days of the filing of the notice. The opposing party must file an answer brief within 20 days after the service of the initial brief of the party seeking review, which must also support any cross-notice for review. The party originally seeking review may file a reply brief within 20 days after the service of the answer brief. The cross-reply brief, if any, must be served within 20 days of the reply brief's filing. Computation of time for filing briefs under this rule follows the applicable Florida Rules of Appellate Procedure. The form, length, binding, type, and margin requirements of briefs filed under this rule follow the requirements of Fla. R. App. P. 9.210.

(4) *Oral Argument.* Request for oral argument may be filed in any case a party files a notice of intent to seek review at the time of filing the first brief. If no request is filed, the case will be disposed of without oral argument, unless the court orders otherwise.

(5) *Burden.* On review, the burden is on the party seeking review to demonstrate that all or part of the referee report is erroneous, unlawful, or unjustified.

(6) *Judgment of Supreme Court of Florida.*

(A) *Authority.* ~~After review, the~~The Supreme Court of Florida will enter an appropriate order or judgment after review. If no review is sought of a referee's report ~~of a referee~~ entered under the rules and filed in the court, the findings of fact are deemed conclusive, and the referee's recommended disciplinary measure will be the disciplinary measure imposed by the court, unless the court directs the parties to submit briefs or conduct oral argument on the suitability of the referee's recommended disciplinary measure. A referee's report that becomes final when no review has been timely

filed will be reported in an order of the Supreme Court of Florida.

(B) Form. The court's judgment may include judgment in favor of any:

- (i) ~~the~~ party to whom costs are awarded;
- (ii) ~~the person(s)~~ to whom restitution is ordered; or
- (iii) ~~the person(s)~~ to whom a fee is ordered to be forfeited.

(7) *Procedures on Motions to Tax Costs.* The court may consider a motion to assess costs if the motion is filed within 10 days of the entry of the court's order or opinion where the referee finds the respondent not guilty at trial and the court, on review, finds the respondent guilty of at least 1 rule violation and does not remand the case to the referee for further proceedings or where the respondent was found guilty at trial and the court, on review, finds the respondent not guilty of any rule violation. The party from whom costs are sought has 10 days from the date the motion was filed in which to serve an objection. Failure to timely file a petition for costs or to timely serve an objection, without good cause, waives the request or objection to the costs, and the court may enter an order without further proceedings. If an objection is timely filed, or the court otherwise directs, the court will remand the motion ~~will be remanded~~ to the referee. On remand, the referee must file a supplemental report that includes a statement of costs incurred and the manner in which the costs should be assessed. Any party may seek review of the supplemental report of referee in the same manner as provided for in this rule for other reports of the referee.

(d) Precedence of Proceedings. Notices of intent to seek review in disciplinary proceedings take precedence over all other civil causes in the Supreme Court of Florida.

(e) Extraordinary Writs. All applications for extraordinary writs that are concerned with disciplinary proceedings under these rules of discipline must be made to the Supreme Court of Florida.

(f) Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure are applicable to notices of intent to seek review in disciplinary proceedings if consistent with this rule. Service on bar counsel and staff counsel constitutes service on The Florida Bar.

(g) Contempt by Respondent. ~~Whenever it is alleged that a respondent is in contempt in a disciplinary proceeding, a~~ petition for an order to show cause why the respondent should not be held in contempt in a disciplinary proceeding and the proceedings on the petition may be filed in and determined by the court or as provided under rule 3-7.11(f).

(h) Pending Disciplinary Cases. If the court orders disbarment ~~or disciplinary revocation~~, that order may include the dismissal without prejudice of other pending disciplinary cases against the respondent. If the revocation is granted by the court, the revocation dismisses all pending disciplinary cases against that respondent.

Comment

Subdivision (c)(7) of this rule applies to situations that arise when a referee finds a respondent not guilty but the court, on review, finds the respondent guilty and does not remand the case back to the referee for further proceedings. *See, e.g., The Florida Bar v. Pape*, 918 So. 2d 240 (Fla. 2005). A similar situation may also occur where a respondent is found guilty at trial, but not guilty by the supreme court on review of the referee's report and recommendation.

RULE 3-7.9 CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. ~~If before a formal complaint is filed a~~ respondent states a desire to plead guilty before

a formal complaint is filed, bar counsel ~~shall consults~~ established board guidelines for discipline and confers with the designated reviewer. If ~~bar counsel or~~ the designated reviewer rejects the proposed consent judgment, the matter ~~shall is~~ not be referred to the board of governors. If bar counsel and the designated reviewer approve the proposed consent judgment, bar counsel advises the respondent ~~shall be advised~~ that bar counsel and the designated reviewer will recommend approval of the respondent's written plea, and the matter ~~shall be is~~ placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel ~~shall notify~~ notifies the respondent and files all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel ~~shall prepares~~ and files a complaint as provided elsewhere in these rules.

(b) After Filing of Formal Complaint. If a respondent states a desire to plead guilty to a formal complaint that has been filed, staff counsel ~~shall consults~~ established board guidelines for discipline and confers with the designated reviewer. If ~~staff counsel or~~ the designated reviewer rejects the proposed consent judgment, the plea ~~shall is~~ not be filed with the referee. If staff counsel and the designated reviewer approve the proposed consent judgment, bar counsel advises the respondent ~~shall be advised~~ that staff counsel and the designated reviewer will recommend approval of the respondent's written plea, and the consent judgment ~~shall be is~~ filed with the referee. If the referee accepts the consent judgment, the referee ~~shall enters~~ a report and files ~~same~~ the report with the court as provided elsewhere in these rules. If the referee rejects the consent judgment, the matter ~~shall proceeds~~ as provided in this chapter.

(c) Approval of Consent Judgments. Acceptance of any proposed consent judgment ~~shall be is~~ conditioned on final approval by the Supreme Court of Florida, and the court's order will recite the disciplinary charges against the respondent.

(d) Content of Conditional Pleas. All conditional pleas ~~shall~~must show clearly by reference or otherwise the disciplinary offenses to which the plea is made. All conditional pleas in which the respondent agrees to the imposition of a suspension or disbarment ~~shall~~must include an acknowledgment that, unless waived or modified by the court on motion of the respondent, the court order accepting the conditional plea will contain a provision that prohibits the respondent from accepting new business from the date of the order or opinion and ~~shall~~must provide that the suspension or disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients. A conditional plea may not permit a respondent to begin serving a suspension or disbarment until the Supreme Court of Florida issues an order or opinion approving the recommended discipline.

(e) Disbarment on Consent. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent ~~shall have~~has the same effect as, and ~~shall be~~is governed by, the same rules provided for disbarment elsewhere in these ~~Rules Regulating The Florida Bar~~rules.

Matters involving disbarment on consent ~~shall be~~are processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these ~~Rules Regulating The Florida Bar~~rules, except that a respondent may enter into a disbarment on consent without admitting any of the facts or rule violations alleged by the bar. In ~~such~~that event, the disbarment on consent ~~shall~~must set forth a brief recitation of the allegations underlying the disbarment on consent. This option ~~shall be~~is only available for disbarments on consent and not for any other type of consent judgment.

(f) Effect of Pleas on Certification. In negotiating consent judgments with a respondent or in recommending acceptance, rejection, or offer of a tendered consent judgment, staff counsel and

~~the~~ designated reviewer ~~shall~~must consider and express a recommendation on whether the consent judgment ~~shall~~will include revocation of certification if held by the ~~attorney~~lawyer and restrictions to be placed on recertification ~~in such areas~~. When certification revocation is agreed to in a consent judgment, the revocation and any conditions on recertification will be reported to the legal specialization and education director for recording purposes.

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

(a) Reinstatement; Applicability. A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again ~~pursuant to~~under this rule. The proceedings under this rule ~~are not applicable~~do not apply to any lawyer who is ~~not~~ineligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.

(b) Petitions; Form and Contents.

(1) *Filing.* The original petition for reinstatement must be verified by the petitioner and filed with the Supreme Court of Florida in an electronic format approved by the supreme court and in compliance with the Florida Rules of Civil Procedure and the Florida Rules of General Practice and Judicial Administration. A copy must be served on The Florida Bar's staff counsel, ~~The Florida Bar~~, in compliance with applicable court rules. The petition for reinstatement may not be filed until the petitioner has completed at least 80% of the term of that lawyer's period of suspension.

(2) *Form and Exhibits.* The petition must be in the form and accompanied by the exhibits provided for elsewhere in this rule. The information ~~required concerning the petitioner may include~~

~~any or all of the following matters in addition to any other matters that may be reasonably required to determine the petitioner's fitness of the petitioner to resume the practice of law~~ may include, but is not limited to: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and employment related information; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition must also include copies of all pleadings in the matter leading to placement on the inactive list and all other matters reasonably required to demonstrate the petitioner's character and fitness ~~of the petitioner to resume the practice of law.~~

(c) Deposit for Cost. The petition must be accompanied by proof of a deposit paid to The Florida Bar in the amount the board of governors prescribes to ensure payment of reasonable costs of the proceedings, as provided elsewhere in this rule.

(d) Reference of Petition for Hearing. The chief justice will refer the petition for reinstatement to a referee for hearing; provided, however, that no such referral will be made until evidence is submitted showing that all costs assessed against the petitioner in all disciplinary or incapacity proceedings have been paid and restitution has been made.

(e) Bar Counsel. When a petition for reinstatement is filed, the board of governors or staff counsel, if authorized by the board of governors, may appoint bar counsel to represent The Florida Bar in the proceeding. The lawyer's duty is to appear at the hearings and to prepare and present evidence to the referee ~~evidence that, in the opinion of the referee or lawyer, will be considered in passing on the petition.~~

(f) ~~Determination of Fitness by Referee Hearing~~Referee Hearing Determining Fitness. The referee to whom the petition

for reinstatement is referred must conduct the hearing as a trial, in the same manner, to the extent practical, as provided elsewhere in these rules. The referee may not refer the petition to civil or grievance mediation. The referee must decide the petitioner's fitness ~~of the petitioner~~ to resume the practice of law. In making this determination, the referee will consider whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated, as further described in this subdivision. All conduct engaged in after the date of admission to The Florida Bar is relevant in proceedings under this rule.

(1) *Disqualifying Conduct.* A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of a petitioner may constitute a basis for denial of reinstatement. The following are considered disqualifying conduct:

- (A) unlawful conduct;
- (B) academic misconduct;
- (C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;
- (D) misconduct in employment;
- (E) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (F) abuse of legal process;
- (G) financial irresponsibility;
- (H) neglect of professional obligations;
- (I) violation of an order of a court;

- (J) evidence of mental or emotional instability;
- (K) evidence of drug or alcohol dependency;
- (L) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (M) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (N) failure of a felony-suspended lawyer to submit proof that the affected lawyer's civil rights have been restored; ~~and~~
- (O) holding out as if eligible to practice in any manner including, but not limited to, use of terms such as lawyer, attorney, esquire, or counselor at law in any communication including, but not limited to, letterhead, business cards, websites, and social media; and
- (P) any other conduct that adversely reflects on the character or fitness of the applicant.

(2) *Determination of Character and Fitness.* In addition to other factors in making this determination, the following factors will be considered in assigning weight and significance to prior conduct:

- (A) age at the time of the conduct;
- (B) recency of the conduct;
- (C) reliability of the information concerning the conduct;
- (D) seriousness of the conduct;
- (E) factors underlying the conduct;
- (F) cumulative effect of the conduct or information;
- (G) evidence of rehabilitation;

- (H) positive social contributions since the conduct;
- (I) candor in the discipline and reinstatement processes;
and
- (J) materiality of any omissions or misrepresentations.

(3) *Elements of Rehabilitation.* Merely showing that an individual is now ~~living as and~~ doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. Any petitioner for reinstatement from discipline for prior misconduct is required to produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- (A) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (B) unimpeachable character and moral standing in the community;
- (C) good reputation for professional ability, where applicable;
- (D) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (E) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (F) restitution of funds or property, where applicable; and
- (G) positive action showing rehabilitation by such things as a person's community or civic service. Community or civic service is donated service or activity that is performed by

someone or a group of people for the benefit of the public or its institutions.

The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for admission to the bar because service to one's community is an essential obligation of members of the bar.

(4) *Educational Requirements.*

(A) In the case of a petitioner's ineligibility to practice for a period of 3 years or longer under this rule, the petitioner must demonstrate to the referee that the petitioner is current with changes and developments in the law:

(i) The petitioner must have completed at least 10 hours of continuing legal education courses for each year or portion of a year that the petitioner was ineligible to practice.

(ii) The petitioner may further demonstrate that the petitioner is current with changes and developments in the law by showing that the petitioner worked as a law clerk or paralegal or taught classes on legal issues during the period of ineligibility to practice.

(B) A petitioner who has been ineligible to practice for 5 years or more will not be reinstated under this rule until the petitioner has re-taken and provided proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE), and those results will remain valid in accordance with the Rules of the Supreme Court Relating to Admissions to the Bar for at least 3 years after the petition for reinstatement is filed. A petitioner must have proof of passing all these required portions of the bar examination before that

petitioner may file a petition for reinstatement under this subdivision.

(g) Hearing; Notice; Evidence.

(1) *Notice.* The referee to whom the petition for reinstatement is referred will fix a time and place for hearing, and notice of the hearing will be provided at least 10 days ~~prior to~~before the hearing to the petitioner, ~~to~~ lawyers representing The Florida Bar, and ~~to~~ other persons who may be designated by the appointed referee.

(2) *Appearance.* Any persons to whom notice is given, ~~any~~ other interested persons, or ~~any~~ local bar association may appear before the referee in support of or ~~in~~ opposition to the petition at any ~~time or times fixed for the hearings.~~

(3) ~~*Failure of Petitioner to be Examined*~~Petitioner's Failure to Submit to Examination. ~~For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the~~The referee will dismiss the petition for reinstatement if the petitioner fails to submit to examination as a witness after notice, unless good cause is shown for the failure.

(4) *Summary Procedure.* ~~If after the completion of discovery bar counsel is unable to discover any evidence on which denial of reinstatement may be based and if no other person provides any relevant evidence, bar~~Bar counsel may, with the approval of the designated reviewer and staff counsel, stipulate to the issue of reinstatement, including conditions for reinstatement if bar counsel is unable to discover, and no other person provides, any relevant evidence to deny reinstatement after discovery is completed. The stipulation must include a statement of costs as provided elsewhere in these ~~Rules Regulating The Florida Bar~~rules.

(5) *Evidence of Treatment or Counseling for Dependency or Other Medical Reasons.* If the petitioner has sought or received

treatment or counseling for chemical or alcohol dependency or for other medical reasons that relate to the petitioner's fitness to practice law, the petitioner must waive confidentiality of ~~such that~~ treatment or counseling for purposes of evaluation ~~of to~~ evaluate the petitioner's fitness. The provisions of rule 3-7.1(d) ~~are applicable~~ apply to information or records disclosed under this subdivision.

(h) Prompt Hearing; Report. The referee to whom a petition for reinstatement has been referred by the chief justice will proceed to a prompt hearing, at the conclusion of which the referee will make and file with the Supreme Court of Florida a report that includes the findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law. The referee must file the report and record in the Supreme Court of Florida.

(i) Review. Review of referee reports in reinstatement proceedings must be in accordance with rule 3-7.7.

(j) Recommendation of Referee and Judgment of the Court. If the petitioner is found unfit to resume the practice of law, the petition will be dismissed. If the petitioner is found fit to resume the practice of law, the referee will enter a report recommending, and the court may enter an order of, reinstatement of the petitioner in The Florida Bar; provided, however, that the reinstatement may be conditioned on the payment of all or part of the costs of the proceeding and on the making of partial or complete restitution to parties harmed by the petitioner's misconduct that led to the petitioner's suspension of membership in The Florida Bar or conduct that led to the petitioner's incapacity; ~~and, if.~~ If petitioner's suspension or incapacity ~~of the petitioner~~ has continued for more than 3 years, the reinstatement may be conditioned on proof of competency as ~~may be required by the judgment in the discretion of~~ the Supreme Court of Florida. Proof may include certification by the Florida Board of Bar Examiners of ~~the successful completion of~~ an examination for admission to The Florida Bar ~~subsequent to~~ after the date of the suspension or incapacity.

(k) Successive Petitions. No person may file a petition for reinstatement ~~may be filed~~ within 1 year following an adverse judgment on a petition for reinstatement filed by or on behalf of the same person. In cases of incapacity, no petition for reinstatement may be filed within 6 months ~~following~~after an adverse judgment under this rule.

(l) Petitions for Reinstatement to Membership in Good Standing.

(1) *Availability.* Petitions for reinstatement under this rule are available to members placed on the inactive list for incapacity not related to misconduct and suspended members of the bar when the disciplinary judgment conditions their reinstatement on a showing of compliance with specified conditions.

(2) *Style of Petition.* Petitions must be styled in the Supreme Court of Florida and filed with the Supreme Court of Florida in accordance with the court's filing requirements, including e-filing requirements where applicable. A copy must be served on staff counsel, ~~The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300~~ at the bar's headquarters address in Tallahassee.

(3) *Contents of Petition.* The petition must be verified by the petitioner and accompanied by a written authorization to the District Director of the Internal Revenue Service, authorizing the furnishing of certified copies of the petitioner's tax returns for the past 5 years or since admission to the bar, whichever is greater. The authorization must be furnished on a separate sheet. The petition must have attached as an exhibit a true copy of all disciplinary judgments previously entered against the petitioner. It must also include the petitioner's statement concerning the following:

(A) name, age, residence, address, and number and relation of dependents of the petitioner;

(B) the conduct, offense, or misconduct on which the suspension or incapacity was based, together with the date of ~~sueh~~the suspension or incapacity;

(C) the names and addresses of all complaining witnesses in any disciplinary proceedings that resulted in suspension; and the name and address of the referee or judge who heard these disciplinary proceedings or of the trial judge, complaining witnesses, and prosecuting lawyer, if suspension was based on conviction of a felony or misdemeanor involving moral turpitude;

(D) the nature of the petitioner's occupation in detail since suspension or incapacity, with names and addresses of all partners, associates in business, and employers, if any, and dates and duration of all these relations and employments;

(E) a statement showing the approximate monthly earnings and other income of the petitioner and the sources from which all earnings and income were derived during this period;

(F) a statement showing all residences maintained during this period, with names and addresses of landlords, if any;

(G) a statement showing all the petitioner's financial obligations ~~of the petitioner~~, including, but not limited to, amounts claimed, unpaid, or owing to The Florida Bar Clients' Security Fund or former clients at the date of filing of the petition, together with the names and addresses of all creditors;

(H) a statement of restitution made for any and all obligations to all former clients and the Florida Bar Clients' Security Fund and the source and amount of funds used for this purpose;

(I) a statement showing dates, general nature, and ultimate disposition of every matter involving the petitioner's arrest or prosecution ~~of the petitioner~~ during the period of suspension for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecuting lawyers, and trial judges;

(J) a statement as to whether any applications were made during the period of suspension for a license requiring proof of good character for its procurement; and, for each application, the date and the name and address of the authority to whom it was addressed, and its disposition;

(K) a statement of any procedure or inquiry, during the period of suspension, covering the petitioner's standing as a member of any profession or organization, or holder of any license or office, that involved the censure, removal, suspension, revocation of license, or discipline of the petitioner; and, as to each, the dates, facts, and ~~the~~ disposition, and the name and address of the authority in possession of these records;

(L) a statement as to whether any fraud charges ~~of fraud~~ were made or claimed against the petitioner during the period of suspension, whether formal or informal, together with the dates and names and addresses of persons making these charges;

(M) a concise statement of facts claimed to justify reinstatement to The Florida Bar;

(N) a statement showing the dates, general nature, and final disposition of every civil action in which the petitioner was either a party plaintiff or defendant, together with dates of filing of complaints, titles of courts and causes, and the names and addresses of all parties and of the trial judge or judges, and names and addresses of all witnesses who testified in this action or actions; and

(O) a statement showing what amounts, if any, of the costs assessed against the accused lawyer in the prior disciplinary proceedings against the petitioner have been paid by the petitioner and the source and amount of funds used for this purpose.

(4) *Comments on Petition.* On the appointment of a referee and bar counsel, copies of the petition will be furnished by the bar counsel to local board members, local grievance committees, and to other persons mentioned in this rule. Persons or groups that wish to respond must direct their comments to bar counsel. The proceedings and finding of the referee will relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of the proposed reinstatement on the administration of justice, ~~and~~ purity of the courts, and confidence of the public in the profession.

(5) *Costs Deposit.* The petition must be accompanied by a deposit for costs of \$500.

(m) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings must include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee;

(H) travel and out-of-pocket expenses of counsel in the proceedings, including the petitioner if acting as counsel; and

(I) an administrative fee in the amount of \$1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee has discretion to award costs and, absent an abuse of discretion, the referee's award will not be reversed.

(3) *Assessment of Bar Costs.* The costs incurred by the bar in any reinstatement case may be assessed against the petitioner unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Petitioner's Costs.* The referee may assess the petitioner's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

(n) Readmission; Applicability. A former member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted may be admitted again only upon full compliance with the rules and regulations governing admission to the bar. No application for readmission following disbarment, disbarment on consent, or disciplinary resignation or revocation may be tendered until ~~such time as all~~ restitution and disciplinary costs ~~as may have been~~ ordered or assessed have been paid, together with any interest accrued.

(1) *Readmission After Disbarment.* Except as ~~might be~~ otherwise provided in these rules, no application for admission may be tendered within 5 years after the date of disbarment or ~~such~~any longer period of time ~~as the court might determine in~~

the disbarment order. An order of disbarment that states the disbarment is permanent precludes readmission to The Florida Bar.

(2) *Readmission After Disciplinary Resignation or Revocation.* A lawyer's petition for disciplinary resignation or revocation that states that it is without leave to apply for readmission will preclude any readmission. A lawyer who was granted a disciplinary resignation or revocation may not apply for readmission until all conditions of the Supreme Court of Florida's order granting the disciplinary resignation or revocation have been complied with.

Comment

To further illuminate the community service requirements of rule 3-7.10(f)(3)(G), bar members can take guidance from the Florida Supreme Court's decision in *Florida Board of Bar Examiners re M.L.B.*, 766 So. 2d 994, 998-999 (Fla. 2000). The court held that rules requiring community service "contemplate and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens."

Court decisions dealing with reinstatements and other discipline provide further guidance as to what specific actions meet the test of community service. The court approved dismissal of a petition for reinstatement where the respondent had no community service and had devoted all her time during suspension to raising her young children. *Fla. Bar v. Tauler*, 837 So. 2d 413 (Fla. 2003). In a more recent decision, the court did not specifically mention lack of community service in denying reinstatement, but the respondent

had shown no evidence of work for others outside his family in his petition. Respondent's community service consisted solely of taking care of his elderly parents and his small child. *Fla. Bar v. Juan Baraque*, 43 So. 3d 691 (Fla. 2010).

RULE 3-7.12. DISCIPLINARY REVOCATION OF ADMISSION TO THE FLORIDA BAR

~~If a disciplinary agency is investigating the conduct of a lawyer, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and a petition for disciplinary revocation may be filed pursuant to this rule. Disciplinary revocation is tantamount to disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. A lawyer may seek disciplinary revocation of admission to The Florida Bar during the progress of disciplinary proceedings in the following manner:~~

(a) Applicability. A lawyer may seek disciplinary revocation of admission to The Florida Bar if a disciplinary agency is investigating that lawyer's conduct before or after a recommendation of probable cause.

(ab) Petition for Disciplinary Revocation. ~~The~~A petition for disciplinary revocation ~~shall~~must be styled "In re(respondent's name).....," titled "Petition for Disciplinary Revocation," filed with the Supreme Court of Florida in an electronic format approved by the supreme court, and ~~shall~~contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. The statement ~~shall~~must describe the charges made or those under investigation for professional misconduct, results of past proceedings, and the status of pending investigations and proceedings. The petition ~~shall~~must state whether it is with or without leave to apply for readmission to the bar. A copy of the petition ~~shall~~must be served upon the executive director of The Florida Bar.

(bc) Judgment. ~~Within 60 days after filing and service of the petition, The Florida Bar shall~~must file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary revocation within 60 days after service of the petition on the bar. The bar's response ~~shall~~must be determined by the bar's board of governors. ~~A~~The bar must serve a copy of the response shall be served upon the petitioner. The Supreme Court of Florida ~~shall~~will consider the petition, any response, and the charges against the petitioner. The Supreme Court of Florida may enter judgment granting disciplinary revocation if it has been shown by the petitioner in a proper and competent manner that ~~the public interest will not be adversely affected by the granting of the petition and that such will neither will~~not adversely affect the public interest, the integrity of the courts, nor hinder the administration of justice, or nor the confidence of the public in the legal profession. If otherwise, The Supreme Court of Florida otherwise will deny the petition shall be denied. ~~If the judgment grants the disciplinary revocation, the~~A judgment granting disciplinary revocation may require that the disciplinary revocation be subject to appropriate conditions. ~~Such conditions may include including, but shall not be limited to, requiring the petitioner to submit to a full audit of all client trust accounts, to execute a financial affidavit attesting to current personal and professional financial circumstances, and to maintain a current mailing address with the bar for a period of 5 years after the disciplinary revocation becomes final or such another time period as the court may order.~~

(d) Effect of Disciplinary Revocation. Disciplinary revocation is tantamount to disbarment and terminates the lawyer's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar.

(ee) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation ~~shall~~does not stay the progress of the

disciplinary proceedings without the approval of the bar's board of governors.

(df) Dismissal of Pending Disciplinary Cases. If disciplinary revocation is granted by the Supreme Court of Florida under this rule, ~~such~~the disciplinary revocation ~~shall~~serves to dismiss all pending disciplinary cases.

(eg) Costs of Pending Disciplinary Cases. The judgment of the court granting disciplinary revocation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary cases against the respondent. ~~Such costs shall be of the types and amounts~~These costs are as authorized elsewhere in these Rules Regulating The Florida Bar.

Comment

The disciplinary revocation rule replaces the former disciplinary resignation rule, but with added safeguards. Disciplinary revocation is allowed for a minimum of 5 years up to permanent disciplinary revocation. The bar's response to all ~~such~~ petitions for disciplinary revocation must be determined by the bar's board of governors. Disciplinary revocation, like the formerly allowed disciplinary resignation, is "tantamount to disbarment." *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000). Like disbarred lawyers, lawyers whose licenses have been disciplinarily revoked pursuant to disciplinary revocation still remain subject to the continuing jurisdiction of the Supreme Court of Florida and must meet all requirements for readmission to bar membership. *The Florida Bar v. Ross*, 732 So.2d 1037, 1041 (Fla. 1998); *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000).

RULE 3-7.16 LIMITATION ON TIME TO OPEN INVESTIGATION

(a) Time for Initiating Investigation of Complaints and Re-opened Cases.

(1) *Initial Complaint or Investigation.* A complainant must make a written inquiry to The Florida Bar within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered. The Florida Bar must open an investigation initiated by The Florida Bar within 6 years from the time the matter giving rise to the investigation is discovered or, with due diligence, should have been discovered.

(2) *Re-opened Investigations.* A re-opened disciplinary investigation is not time barred by this rule if the investigation is re-opened within 1 year after the date on which the matter was closed, except that a re-opened investigation based on a deferral made in accordance with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar is not barred if re-opened within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which the deferral was based.

(3) *Deferred Investigations.* A disciplinary investigation ~~which~~that began with the opening of a discipline file and bar inquiries to a respondent within the 6-year time period as described in this rule and was then deferred ~~in accordance with~~under bar policy and the Rules Regulating The Florida Bar, is not time barred under this rule if a grievance committee finds probable cause and the bar files its formal complaint within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which deferral was based.

(b) Exception for Theft or Conviction of a Felony Criminal Offense. There is no limit on the time in which to present, reopen, or bring a matter alleging theft or conviction of a felony criminal offense by a member of The Florida Bar.

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. The limitation of time in which to bring or reopen a complaint within this rule is tolled where it can be shown

that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint.

(d) Constitutional Officers. The Florida Bar is prohibited from filing a complaint or taking any other disciplinary action against a constitutional officer who is required to be a member in good standing of The Florida Bar to hold that office while that constitutional officer holds the constitutional office. Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.

Comment

Under Article IV, Section 7 of the Florida Constitution, the governor has the authority to suspend constitutional officers.

CHAPTER 14 GRIEVANCE MEDIATION AND FEE ARBITRATION 14-1. ESTABLISHMENT RULE 14-1.2 JURISDICTION

(a) Fee Arbitration. The program has jurisdiction to resolve disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fees or costs paid, charged, or claimed for legal services rendered by a member of The Florida Bar when the parties to the dispute agree to arbitrate under the program either by written contract that complies with the requirements of subdivision (i) of rule 4-1.5, ~~or~~ by a request for arbitration signed by all parties, ~~or~~ as a condition of probation, or as a part of a discipline sanction as authorized elsewhere in these Rules Regulating The Florida Bar. Jurisdiction is limited to matters in which:

(1) there is no bona fide disputed issue of fact other than the amount of or entitlement to legal fees or costs; and

(2) it is estimated by all parties that all the evidence bearing on the disputed issues of fact may be heard in 8 hours or less.

The program does not have jurisdiction to resolve disputes involving matters in which a court has taken jurisdiction to determine and award a reasonable fees or costs to a party or that involve fees or costs charged that constitute a violation of the Rules Regulating The Florida Bar, unless specifically referred to the program by the court or by bar counsel.

The program has authority to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

(b) Grievance Mediation. The program has jurisdiction to mediate the issues in a disciplinary file referred to the program in which the public interest is satisfied by the resolution of the private rights of the parties to the mediation. The program does not have jurisdiction to resolve the issues in a disciplinary file if any issue involved in that file must remain for resolution within the disciplinary process.

14-4. INSTITUTION OF PROCEEDINGS

RULE 14-4.1 ARBITRATION PROCEEDINGS

(a) Institution of Proceedings. All arbitration proceedings ~~shall be~~ are instituted by the filing of a written consent to arbitration by written contract between the parties to the arbitration, ~~or orders~~ of this court in proceedings under these Rules Regulating The Florida Bar imposing a sanction or condition ~~or of~~ of probation, or by the consent form prescribed in the policies adopted under the authority of this chapter and signed by each party to the controversy.

(b) Position Statement and Relevant Documents. Each ~~of the parties~~ party ~~shall~~ must provide the arbitrator(s) with a concise statement of that party's position, including the amount claimed or in controversy, on the form prescribed and authorized by the standing committee. If there is a written contract regarding fees or

costs between the parties, a copy of that written contract ~~shall~~must accompany the request or submission.

(c) Referral by Intake Counsel or Bar Counsel. Intake counsel, with the consent of the parties and concurrence of staff counsel, or bar counsel, with the consent of the parties, and the concurrence of the chief branch staff counsel, may refer appropriate cases to the fee arbitration program.

(d) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer appropriate cases to the fee arbitration program.

(e) Referral by Board of Governors. The board of governors, with the agreement of the parties and ~~upon~~ review of a file referred to it as authorized elsewhere under these ~~Rules Regulating The Florida Bar~~rules, may refer appropriate cases to the fee arbitration program if they meet the criteria established by the policies adopted under the authority of this chapter.

**14-5. EFFECT OF AGREEMENT TO MEDIATE OR
ARBITRATE AND FAILURE TO COMPLY
RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND
FAILURE TO COMPLY**

(a) Closure of Disciplinary File. A disciplinary file that involves only fees or costs issues ~~shall~~will be closed without the entry of a sanction ~~upon~~ the entry of an agreement to arbitrate.

(b) Effect of Respondent's Failure to Attend or Comply. ~~It shall be a violation of the Rules Regulating The Florida Bar for a~~A respondent ~~who~~ to fails to attend an agreed-upon arbitration conference without good cause violates the Rules Regulating The Florida Bar. Likewise, it ~~shall be a violation of the Rules Regulating The Florida Bar for a~~ respondent ~~to~~who fails to fully comply with the terms of an arbitration award without good cause violates the Rules Regulating The Florida Bar.

(c) Effect of Complainant's or Other Opposing Party's Failure to Attend. ~~If~~The disciplinary file may remain closed if a file referred for arbitration is not fully resolved by reason of a complainant's or other opposing party's failure to attend without good cause, ~~the disciplinary file based thereon may remain closed.~~