

APPENDIX B

SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

October 3, 2022

RULES REGULATING THE FLORIDA BAR

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. [no change]

(b) The Board or the Board of Governors. [no change]

(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.

The non-substantive change removing the colon and adding a period at the end of the first sentence was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

All of the definitions in this rule are in alphabetical order except the last 3. The changes reorganize the rule to put all the subdivisions in alphabetical order.

(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;

Changes in the lead sentence and subdivision (a) simplify the language of the rule and end the sentence in a period instead of a colon to comport with this Court's *Guidelines for Rules Submissions*.

<p>(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;</p> <p><u>(C) the misconduct resulted in or is likely to result in actual or potential injury to the public or the legal system;</u></p> <p>(D) the respondent has been publicly disciplined in the past 3 years;</p> <p>(E) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;</p> <p>(F) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or</p> <p>(G) the misconduct constitutes the commission of a felony under applicable law.</p> <p>(2) <i>Discretion of Grievance Committee.</i> 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<u>subdivision</u> (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<u>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</u></p>	<p>Within subdivision (b)(1)(C), adds potential or actual harm to the factors which will not lead to minor misconduct absent unusual circumstances, as lawyers generally are not eligible for minor misconduct if the misconduct results in potential or actual harm.</p> <p>Non-substantive changes in subdivision (b)(2) comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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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 ~~15~~30 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~~

Non-substantive changes in subdivision (b)(3) remove specific reference to avoid incorrectness if the subdivision number referenced changes.

In subdivision (b)(3), the changes make the procedure and terminology for recommendation of minor misconduct consistent with procedures and terminology in rule 3-7.4(n), so it is clear that if the respondent rejects minor misconduct, the bar then files a formal complaint. Changes also increase the time to reject minor misconduct from 15 to 30 days to give respondents more time to consider whether to accept it.

Subdivision (b)(4) contains non-substantive changes to simplify the language of the rule to comport with

<p>misconduct. At trial before a referee following <u>a respondent's rejection by a respondent</u> of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.</p> <p>(5) <i>Admission of Minor Misconduct.</i> A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 15<u>30</u> days after <u>service of a notice of a finding of probable cause by a grievance committee or the board of governors</u>. An admission of minor misconduct may be conditioned on acceptance by the grievance committee <u>or the board of governors</u>, 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 <u>or board of governors</u> 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, <u>in which case, the report of minor misconduct will be issued by the grievance committee</u>. If a respondent's admission is accepted by the grievance committee <u>or board of governors</u>, 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.</p> <p>(c) Probation. The respondent may be placed on probation for a stated period of time of not less than<u>between</u> 6 months not more</p>	<p>this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Regarding (b)(5), technically, the rule only provides for an admission of minor misconduct when a grievance committee finds probable cause. However, on occasion, the Board of Governors finds probable cause. The amendments would make clear that a respondent can tender a written admission of minor misconduct when it is the Board of Governors that finds probable cause to afford a respondent the same procedures as if a grievance committee found probable cause. The proposed increase in the time frame from 15 to 30 days give respondents more time to accept an offer of minor misconduct or tender an offer of minor misconduct to the bar.</p> <p>Subdivision (c) contains non-substantive changes to simplify the language of the rule and add commas for consistency throughout</p>
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<p>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:</p> <ul style="list-style-type: none"> (1) [no change] (2) [no change] (3) [no change] (4) [no change] (5) [no change] (6) [no change] <p>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.</p> <p>(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<u>The bar will provide due notice</u> 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</p>	<p>the rules to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Changes remove publication in the Southern Reporter in subdivision (d) because public reprimands no longer are automatically published in the Southern Reporter.</p>
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<p>designated to administer the reprimand, or the referee, if required, and this appearance will be made a part of the record of the proceeding.</p> <p>(e) Suspension. [no change]</p> <p>(f) Disbarment. [no change]</p> <p>(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<u>another</u> period of time in excess of 5 years contained in said<u>that</u> order.</p> <p>(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 <u>all</u>:</p>	<p>Subdivision (g) contains non-substantive changes to delete an extra space and legalese to comport with this Court’s <i>Guidelines for Rules Submissions</i>.</p> <p>The non-substantive change in subdivision (h) striking the comma after “must” was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p>
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<p>(1) all of the respondent's clients <u>of the respondent</u> with matters pending in the respondent's practice;</p> <p>(2) all opposing counsel or co-counsel in the matters listed in (1), above;</p> <p>(3) all courts, tribunals, or adjudicative agencies before which the respondent is counsel of record; and</p> <p>(4) all state, federal, or administrative bars of which respondent is a member.</p> <p>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.</p> <p>(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 <u>all or any part of the fee or any part thereof</u>. 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.</p> <p>(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</p>	<p>Subdivision (h) includes non-substantive changes to delete repetition of the word "all" at the beginning of items in a list to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Subdivision (i) includes non-substantive changes to simplify the language and remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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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.

Subdivision (j) includes the addition of a comma after “prohibited fee” to correct grammar and simplifies other language to comport with this Court’s *Guidelines for Rules Submissions*.

<p style="text-align: center;"><u>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</u></p> <p>(a) Petition for Emergency Suspension.</p> <p>(1) <i>Great Public Harm.</i> [no change]</p> <p>(2) <i>Discipline by Foreign Jurisdiction.</i> The Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis <u>under this chapter</u> 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 disbaring a lawyer from the practice of law under rule 3-7.2.</p> <p>(3) <i>Formal Complaint, Answer, and Defenses.</i> [no change]</p> <p>(4) <i>Appointment of Referee.</i> The Supreme Court of Florida <u>will promptly appoint or direct the appointment of a referee on entry of an order of suspension.</u></p> <p>(5) <i>New Cases and Existing Clients.</i> <u>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.</u></p>	<p>Changes name to reflect information found in subdivision (c).</p> <p>Non-substantive changes throughout the rule reorganize the contents of the rule for simplicity and understandability and to comport with this Court’s <i>Guidelines for Rules Submissions.</i></p> <p>Bar staff un-struck the phrase “of law” at the end of (a)(2). This was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>, as striking the phrase was a clear error. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p>
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(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.

New subdivision (a)(4) is moved from old subdivision (h).

New subdivision (a)(5) is moved from old subdivision (f).

New subdivision (a)(6) is moved from old subdivision (g).

New subdivision (a)(7) is moved from old subdivision (j).

New subdivision (a)(8) is moved from old subdivision (l) and changed to add electronic filing in a manner approved by this Court to make bar cases consistent with other court cases by requiring electronic filing of documents. This will be easier for this Court to maintain and also easier for any party to determine the official record solely from the electronic filings.

(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 (e) 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~~

New subdivision (a)(9) is moved from old subdivision (k).

New subdivision (a)(10) is moved from old subdivision (l) and changed to add electronic filing in a manner approved by this Court to make bar cases consistent with other court cases by requiring electronic filing of documents. This will be easier for this Court to maintain and also easier for any party to determine the official record solely from the electronic filings.

Non-substantive changes in subdivision (b)(1) remove specific references to rules to avoid an incorrect citation if the subdivision number referenced changes. The non-substantive change of adding a title to the subdivision was not approved by the Board of Governors, but was made under the

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.

authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules*

Submissions. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

New subdivision (b)(3) is moved from old subdivision (h).

New subdivision (b)(4) is moved from old subdivision (f).

(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

New subdivision (b)(5) is moved from old subdivision (l).

New subdivision (b)(6) is moved from old subdivision (k).

Subdivision (c) is reorganized into subdivisions with titles and other non-substantive changes are made to comport with this Court's *Guidelines for Rules Submissions*.

Adds interim placement on the inactive list as that restricts the lawyer from practicing law and

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~~ 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

maintaining a trust account, treating that restriction the same as an emergency suspension or interim probation in the same way as an emergency suspension or interim probation so that banks will be notified of the restriction.

New subdivision (c)(2) is moved from old subdivision (h).

The non-substantive change in subdivision (c)(4) replacing "bar counsel and bar auditors" with "the bar" was not approved by the Board of Governors, but was made under the authority granted to bar staff to make non-substantive editorial amendments in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*. The amendment as it appears in this petition was noticed in the full-

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.

text on-line version of the official notice in the bar *News*.

In subdivision (b)(5), adds electronic filing in a manner approved by the court. Changes would make lawyer discipline cases consistent with other court cases by requiring electronic filing of documents. This will be easier for the Court to maintain and also easier for any part to determine the official record solely from the electronic filings.

Subdivision (d) is moved into subdivision (c)(7), as it concerns the same subject matter, and other non-substantive changes are made to comport with this Court's *Guidelines for Rules Submissions*.

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

The stricken language in this subdivision is moved to new subdivision (c)(9) below.

New subdivision (c)(9) is moved from current subdivision (d) above.

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~~

Subdivisions (f), (g), (h), (i), (j), (k), and (l) are moved to the subdivisions to which they relate above.

~~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.

<p>RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS</p> <p>(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.</p> <p>(b) Types of Disciplinary Cases Eligible for Diversion. [no change]</p> <p>(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.</p> <p>(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar shall<u>will</u> 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.</p> <p>(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall<u>must</u> state the practice and professionalism enhancement program(s) to which the respondent shall<u>will</u> be diverted,</p>	<p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes to correct grammar and simplify the language to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this</p>
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<p>shall state the general purpose for the diversion, and the costs thereof to be paid by the respondent.</p> <p>(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the <u>bar must serve the recommendation</u> 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<u>does</u> not have the right to reject any specific requirement of a practice and professionalism enhancement program.</p> <p>(g) Effect of Rejection of Recommendation by Respondent. In the event that If a respondent rejects a diversion recommendation the matter shall<u>will</u> be returned for further proceedings under these rules.</p> <p>(h) Diversion Before Formal Complaint is Filed. <u>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.</u></p>	<p>Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Adds new subdivision (h) to provide for diversion before the filing of a formal complaint. Rule 3-5.3 currently does not provide for diversion before the filing of a formal complaint, while rule 3-7.9 allows for a conditional guilty plea before filing a complaint. The amendment makes rule 3-5.3 consistent with rule 3-7.9.</p>
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<p>(hi) Diversion at Trial Level.</p> <p>(1) <i>Agreement of the Parties.</i> 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.</p> <p>(2) <i>After Submission of Evidence.</i> [no change]</p> <p>(3) <i>Costs of Practice and Professionalism Enhancement Program.</i> A referee's recommendation of diversion to a practice and professionalism enhancement program shall<u>must</u> state the costs thereof to be paid by the respondent.</p> <p>(4) <i>Appeal of Diversion Recommendation.</i> The respondent and the bar shall have the right to appeal a referee's recommendation of diversion, except in the case of<u>for a</u> diversion agreed to under subdivision (hi)(1).</p> <p>(5) <i>Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program.</i> Nothing in this rule shall precludes a referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.</p> <p>(i) Effect of Diversion. When the recommendation of diversion becomes final, the respondent shall<u>must</u> enter the practice and professionalism enhancement program(s) and complete <u>their</u> requirements thereof. Upon respondent's entry into a practice and professionalism enhancement program, the<u>The</u> bar shall<u>will</u> terminate</p>	<p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>The non-substantive change in subdivision (i)(4) correcting the rule reference from (h) to (i) was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p>
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<p>its investigation into the matter and <u>close its disciplinary files shall be closed indicating the diversion on a respondent's entry into a practice and professionalism enhancement program</u>. Diversion into the practice and professionalism enhancement program shall not constitute <u>is not</u> a disciplinary sanction.</p> <p>(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 <u>The bar's file shall will remain closed if a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent is diverted.</u></p> <p>(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 <u>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.</u> Failure to complete the practice and professionalism enhancement program shall be considered as an <u>matter of aggravation</u> <u>aggravating factor</u> when imposing a disciplinary sanction.</p> <p>(lm) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar shall <u>will</u> determine the costs of practice and professionalism enhancement programs and publish the</p>	<p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>The non-substantive change in the last sentence of (l) replacing circumstance with factor was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Non-substantive changes remove legalese to comport with this</p>
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<p>amount of the costs thereof that shall be assessed against and paid by a respondent.</p> <p style="text-align: center;">Comment</p> <p>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 <u>then attend</u> a Trust Account Workshop for a completely different violation 1 year after the first diversion is completed.</p>	<p>Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Non-substantive changes remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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**3-6. EMPLOYMENT OF CERTAIN ATTORNEYS~~SLAWYERS~~ OR
FORMER ATTORNEYS~~SLAWYERS~~
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

Changes “attorneys” to “lawyers” for consistency throughout the rules and because the term “lawyer” is defined in the Rules Regulating The Florida Bar while “attorney” is not. The rule also is reorganized for better clarify.

The bar proposes adding subdivision (a)(2) to include lawyers who are suspended or disbarred by another agency or in another jurisdiction because the same rationale applies for the restrictions: these lawyers or former lawyers also should not have direct client contact to avoid any possibility of the unlicensed practice of law, should not have access to trust accounts, and should not act in a fiduciary capacity.

Proposed subdivision (a)(3) merely clarifies and puts lawyers on notice that the term disbarred includes all functional equivalents of disbarment.

<p><u>client's legal representation at the recommendation of the entity or any of its members or employees.</u></p> <p>(b) Employment by Former Subordinates Prohibited. [no change]</p> <p>(c) Notice of Employment Required. [no change]</p> <p>(d) Prohibited Conduct.</p> <p>(1) <i>Client Contact.</i> [no change]</p> <p>(2) <i>Trust Funds or Property.</i> 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<u>an</u> employer is a beneficial owner.</p> <p>(3) <i>Practice of Law.</i> [no change]</p> <p>(e) Quarterly Reports by Individual and Employer Required. [no change]</p> <p>(f) Supervising Lawyer. [no change]</p> <p style="text-align: center;">Comment</p> <p>[no change]</p>	<p>Regarding additions in proposed subdivision (a)(4), the bar did not prosecute violations of Rule 3-6.1 in a recent diversion case because the lawyer did not directly hire the disbarred lawyer but instead suggested that the client hire the disbarred lawyer. Lawyers will not be able to evade application of this rule by having a client hire a suspended, disbarred, or incapacitated lawyer directly. Lawyers will also be put on notice that the rule applies even if the lawyer does not directly hire the suspended, disbarred, or incapacitated lawyer.</p>
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3-7. PROCEDURES
RULE 3-7.1 CONFIDENTIALITY

(a) Scope of Confidentiality. [no change]

(1) *Pending Investigations.* [no change]

(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(a), 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.* [no change]

(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.* [no change]

Subdivisions (a)(2), (3) and (5) are reworded to clarify when disciplinary information becomes public.

Amendments to subdivision (a)(3) correct a rule reference from rule 3-3.2(a) to rule 3-3.2(b).

Amendments to the title and substance of subdivision (a)(5) reflect a change to the name of the program to include fee arbitration.

<p>(7) <i>Incapacity Not Involving Misconduct.</i> [no change]</p> <p>(8) <i>Petition for Emergency Suspension or Probation.</i> [no change]</p> <p>(9) <i>Proceedings on Determination or Adjudication of Guilt of Criminal Misconduct.</i> [no change]</p> <p>(10) <i>Professional Misconduct in Foreign Jurisdiction.</i> [no change]</p> <p>(11) <i>Reinstatement Proceedings.</i> [no change]</p> <p>(12) <i>Disciplinary Resignations and Disciplinary Revocations.</i> [no change]</p> <p>(b) Public Record. [no change]</p> <p>(c) Circuit Court Proceedings. [no change]</p> <p>(d) Limitations on Disclosure. [no change]</p> <p>(e) Response to Inquiry. [no change]</p> <p>(f) Notice to Law Firms. [no change]</p> <p>(g) Production of Disciplinary Records Pursuant to Subpoena. [no change]</p> <p>(h) Notice to Judges. [no change]</p> <p>(i) Evidence of Crime. [no change]</p> <p>(j) Chemical Dependency and Psychological Treatment. That a lawyer, judge, or justice has voluntarily sought, received, or accepted</p>	
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<p>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.</p> <p>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.</p> <p>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 <u>be admitted as evidence in disciplinary proceedings under these rules.</u></p> <p>(k) Response to False or Misleading Statements. [no change]</p> <p>(l) Disclosure by Waiver of Respondent. [no change]</p> <p>(m) Maintaining Confidentiality Required by Rule or Law. [no change]</p>	<p>Amendments to subdivision (j) are proposed to make the last paragraph of subdivision (j) consistent with the first paragraph of subdivision (j) and to more clearly reflect the purpose of the rule.</p>
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**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 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 complainantthe 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 metif bar counsel determines further investigation is warranted. Bar counsel ~~shall~~must investigate the allegations contained in ~~the~~any written

Within subdivision (a), adds "written" to clarify that the bar reviews written inquiries.

The non-substantive change in subdivision (a) replacing "complainant" with "complaining witness" in 2 places was not approved by the Board of Governors, but was made under the authority granted to bar staff to make non-substantive edits, in this case for consistency with the rest of the rule, in this Court's administrative order AOSC06-14, dated June 14, 2006, *In re: Guidelines for Rules Submissions*. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

Within subdivision (b), adds a reference to rule 3-7.11 on subpoena issuance. The amendment assists those

<p><u>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.</u></p> <p>(c) Form for Complaints. All complaints <u>must be in writing and signed under penalty of perjury</u>, except those initiated by The Florida Bar, shall be in writing and under oath. <u>Complaints may be signed electronically and submitted to the bar electronically.</u> The complaint shall<u>must</u> contain a statement providing:</p> <p>Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.</p> <p>(d) Dismissal of Disciplinary Cases. Bar counsel may dismiss disciplinary cases if, after complete investigation, bar counsel determines, <u>after complete investigation,</u> that the facts show that the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel shall<u>does</u> not preclude further action or review under the Rules Regulating The Florida Bar. Nothing in these rules shall preclude barBar counsel from obtaining<u>may dismiss a case with or without a letter of advice with</u> 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 <u>must notify the complainant of the dismissal and reasons for dismissal.</u></p>	<p>unfamiliar with chapter 3 by indicating where information can be found on how subpoenas are issued. Non-substantive amendments comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Subdivision (c) contains non-substantive changes to remove legalese to comport with this Court's <i>Guidelines for Rules Submissions</i>. Additional amendments add that complaints may be signed and submitted to the bar electronically to reflect the bar's current procedure in filing electronically.</p> <p>Subdivision (d) contains non-substantive changes to simplify the language and make the rule clearer to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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<p>(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.</p> <p>(f) Referral to Grievance Committees. [no change]</p> <p>(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<u>Bar counsel's closure of an inquiry or complaint is</u> deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become<u>public information in accordance with this subchapter.</u></p>	<p>The unnecessary word “that” is removed to make the sentence shorter.</p> <p>Subdivision (g) contains non-substantive changes to comport with this Court’s <i>Guidelines for Rules Submissions</i>.</p>
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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

Subdivision (a) contains non-substantive changes to comport with this Court's *Guidelines for Rules Submissions*.

Subdivision (b) contains non-substantive changes to comport with this Court's *Guidelines for Rules Submissions*.

Within subdivision (c), adds a reference to subpoena procedure in rule 3-7.11 to assist those unfamiliar with chapter 3 by providing a reference to another rule addressing how subpoenas are issued. Subdivision (c) contains non-substantive changes of adding a comma after "bar counsel" to correct grammar and striking the "up" in upon to remove legalese to comport with this Court's *Guidelines for Rules Submissions*.

<p>made a party to civil litigation or is a defendant or is acquitted in a criminal action, notwithstanding that either of such <u>even if the</u> proceedings involves the subject matter of the investigation.</p> <p>(f) Counsel and Investigators. Upon request of a grievance committee, staff Staff counsel may appoint a bar counsel or an investigator to assist the <u>grievance committee in an investigation, at the committee's request.</u> Bar counsel shall <u>will</u> assist each grievance committee in carrying out its investigative and administrative duties and shall <u>will</u> 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.</p> <p>(g) Quorum, Panels, and Vote.</p> <p>(1) <i>Quorum.</i> Three members of the committee, 2 of whom must be lawyers, shall constitute a quorum.</p> <p>(2) <i>Panels.</i> The grievance committee may be divided into panels of not fewer than 3 members, <u>at least 2/3</u> of whom must be lawyers. Division of the <u>The grievance committee may be divided</u> into panels shall only be upon concurrence of the designated reviewer and the chair of the grievance committee. The 3-member panel shall <u>will</u> 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 <u>is</u> the presiding officer.</p> <p>(3) <i>Vote.</i> All findings of probable cause and recommendations of guilt of minor misconduct shall <u>must</u> be made by affirmative vote</p>	<p>Subdivisions (d), (e), and (f) have non-substantive changes to comport with this Court's <i>Guidelines for Rules Submissions.</i></p> <p>Within subdivision (e), changes "board of governors" to "appropriate designated reviewer." Board of Governors member Brian Burgoon raised a possible conflict between rules 3-7.4 and 3-7.6 and Standing Board Policy 15.55. The rules provide that the Board of Governors may defer disciplinary investigation pending civil, criminal and administrative proceedings, while the standing board policy indicates that cases may be deferred with the concurrence of the designated reviewer. The changes make the rules and standing board policy consistent with deferral on the concurrence of the designated reviewer.</p> <p>The non-substantive change in subdivision (g) adding "at least" and "/3" and striking "3-member" in 2 places was not approved by the</p>
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<p>of a majority of the committee members present, which majority must number at least 2 members. There shall be<u>is</u> 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<u>must</u> 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.</p> <p>(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<u>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 the respondent an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.</u></p> <p>(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<u>The complainant shall be granted</u><u>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</u></p>	<p>Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Subdivision (h) has non-substantive changes to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Subdivision (i) has non-substantive changes to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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~~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

Subdivision (j) has non-substantive changes to comport with this Court's *Guidelines for Rules Submissions*.

Subdivision (k) has non-substantive changes to comport with this

<p>advice issued by a grievance committee in connection with findings of no probable cause shall<u>must</u> be signed by the presiding member of the committee. Letter reports and letters of advice shall<u>do</u> not constitute a disciplinary sanction.</p> <p>(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<u>must</u> 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<u>provided</u> 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<u>executive</u> session to debate the issues involved and to reach a decision as to<u>decide</u> the action to be taken. The formal complaint shall<u>must</u> be approved by the member of the committee who presided in the proceeding. The <u>board prescribes the form of formal complaints</u>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<u>is</u> 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<u>must</u> be promptly forwarded to and reviewed by staff counsel. Staff counsel shall<u>must</u> file the formal complaint and furnish<u>provide</u> a copy to the respondent. Staff counsel shall<u>must</u> 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<u>case</u>. A copy of</p>	<p>Court's <i>Guidelines for Rules Submissions</i>.</p> <p>Subdivision (l) has non-substantive changes to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p>
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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

Subdivision (m) has non-substantive changes to comport with this Court's *Guidelines for Rules Submissions*.

<p>by the board, <u>bar counsel will then serve the report</u> shall then be served on the respondent by bar counsel.</p> <p>(n) Rejection of Admonishment. The order of admonishment shall become <u>final</u> unless rejected by the respondent within 15 <u>30</u> 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 <u>will prepare a formal complaint</u> as in the case of a finding of probable cause.</p> <p>(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 <u>is</u> returned to the committee for further proceedings.</p>	<p>Changes to subdivision (n) conform the subdivision to current bar procedure for rejection of admonishment. Changes also make this subdivision consistent with rule 3-5.1(b)(3), including changing the time period from 15 to 30 days for the respondent to accept an offer of minor misconduct. The changes make rules 3-5.1(b)(3) and 3-7.4(n) consistent in handling of cases where admonishment or minor misconduct is found or offered. Expanding the time period gives respondents more time to accept an offer of misconduct.</p> <p>Subdivision (o) contains non-substantive changes to comport with this Court's <i>Guidelines for Rules Submissions</i>.</p> <p>.</p>
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<p style="text-align: center;">RULE 3-7.6 PROCEDURES BEFORE A REFEREE</p> <p>(a) Referees.</p> <p>(1) <i>Appointment.</i> [no change]</p> <p>(2) <i>Minimum Qualifications.</i> [no change]</p> <p>(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.</p> <p>(c) Pretrial Conference. [no change]</p> <p>(d) Venue. [no change]</p> <p>(e) Style of Proceedings. [no change]</p> <p>(f) Nature of Proceedings.</p> <p>(1) <i>Administrative in Character.</i> [no change]</p> <p>(2) <i>Discovery.</i> [no change]</p> <p>(3) <i>Mediation.</i> [no change]</p> <p>(g) Bar Counsel. [no change]</p> <p>(h) Pleadings. Pleadings may be informal and must comply with the following.</p> <p>(1) <i>Complaint; Consolidation and Severance.</i></p>	<p>The non-substantive change in subdivision (b) striking “on the bar’s filing of a formal complaint” was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors, in this case unnecessary verbiage, in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p>
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<p>(A) Filing. [no change]</p> <p>(B) Content. The complaint must set forth the particular act or acts of conduct for which the Florida Bar member<u>respondent</u> is sought to be disciplined.</p> <p>(C) Joinder of Charges and Respondents; Severance. [no change]</p> <p>(2) <i>Answer and Motion</i>. [no change]</p> <p>(3) <i>Reply</i>. [no change]</p> <p>(4) <i>Disposition of Motions</i>. [no change]</p> <p>(5) <i>Filing and Service of Pleadings</i>.</p> <p>(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 <u>in an electronic format approved by the supreme court</u> 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.</p> <p>(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee must be filed with the referee <u>in an electronic format approved by the supreme court</u> 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.</p>	<p>The non-substantive change in subdivision (h)(1)(B) replacing “Florida Bar” with “respondent” was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>. The amendment makes terminology (use of “respondent”) consistent throughout chapter 3. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Within subdivisions (h)(5)(A) and (h)(5)(B) adds that filing will be in electronic format approved by the court. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any</p>
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<p>(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<u>the bar</u>.</p> <p>(6) <i>Amendment.</i> [no change]</p> <p>(7) <i>Expediting the Trial.</i> [no change]</p> <p>(8) <i>Disqualification of Referee.</i> [no change]</p> <p>(i) Notice of Final Hearing. [no change]</p> <p>(j) The Respondent. [no change]</p> <p>(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<u>complaining witness'</u> lack of cooperation or any settlement, compromise, or restitution between the respondent and complainant<u>complaining witness</u>. The complaining witness has no right to appeal.</p> <p>(l) Parol Evidence. [no change]</p>	<p>party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically.</p> <p>The non-substantive change in subdivision (h)(1)(B) replacing “The Florida Bar” with “the bar” was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>. The amendment makes the terminology consistent throughout this rule. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>The non-substantive change in subdivision (k) replacing “complainant” with “complaining witness” in 2 places was not</p>
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<p>(m) Referee’s Report.</p> <p>(1) <i>Timing of Report.</i> [no change]</p> <p>(2) <i>Contents of Report.</i> [no change]</p> <p>(A) [no change]</p> <p>(B) [no change]</p> <p>(C) [no change]</p> <p>(D) [no change]</p> <p>(E) [no change]</p> <p>(3) <i>Filing of Report.</i> The referee must file the report and record of proceedings with the Supreme Court of Florida <u>in an electronic format approved by the supreme court</u>. 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.</p> <p>(n) The Record.</p> <p>(1) <i>Recording of Testimony.</i> 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</p>	<p>approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>. The amendment makes terminology consistent throughout chapter 3. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Within subdivision (m)(3), adds that filing will be in electronic format approved by the court. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also</p>
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<p>must pay the cost of transcription directly to the court reporter. Transcripts ordered filed by the referee<u>If the referee orders that transcripts be filed, they</u> are subject to assessment as costs as elsewhere provided in these rules.</p> <p>(2) <i>Contents.</i> [no change]</p> <p>(3) <i>Preparation and Filing.</i> 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 <u>in an electronic format approved by the supreme court.</u></p> <p>(4) <i>Supplementing or Removing Items from the Record.</i> [no change]</p> <p>(o) Plea of Guilty by Respondent. [no change]</p> <p>(1) <i>Before Filing of Complaint.</i> [no change]</p> <p>(2) <i>After Filing of Complaint.</i> [no change]</p> <p>(3) <i>Unconditional.</i> [no change]</p> <p>(4) <i>Procedure.</i> [no change]</p> <p>(p) Cost of Review or Reproduction.</p> <p>(1) [no change]</p> <p>(2) [no change]</p>	<p>brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically.</p> <p>The non-substantive change in subdivision (n)(1) rearranging the sentence for clarity was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i> The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News.</i></p> <p>Within subdivision (n)(3), adds that filing will be in electronic format approved by the court. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the</p>
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<p>(A) [no change]</p> <p>(B) [no change]</p> <p>(C) [no change]</p> <p>(q) Costs.</p> <p>(1) <i>Taxable Costs.</i> [no change]</p> <p>(A) [no change]</p> <p>(B) [no change]</p> <p>(C) [no change]</p> <p>(D) [no change]</p> <p>(E) [no change]</p> <p>(F) [no change]</p> <p>(G) [no change]</p> <p>(H) [no change]</p> <p>(I) [no change]</p> <p>(2) <i>Discretion of Referee.</i> [no change]</p> <p>(3) <i>Assessment of Bar Costs.</i> [no change]</p>	<p>electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically.</p>
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<p>(4) <i>Assessment of Respondent's Costs.</i> [no change]</p> <p>(5) <i>Time for Filing Motion to Assess Costs.</i> [no change]</p> <p>Court Comment</p> <p>[no change]</p> <p>Comment</p> <p>[no change]</p>	
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**RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF
FLORIDA**

All ~~reports of a 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) [no change]

(b) Appointment of Bar Counsel. [no change]

(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,

The non-substantive changes of replacing the colon with a period at the end of the first sentence and the first sentence of (c) and adding "referee's" before report in 3 places in (c)(1) were not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

Within subdivision (c)(1), adds electronic filing in a manner approved by the Court. This Court often receives boxes of paper that constitute filing of an appeal. Changes would make bar cases consistent with other court cases

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~~ 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.* [no change]

(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.

and require electronic filing of documents. This will be easier for this Court to maintain and also easier for any part to determine the official record solely from the electronic filings. The change also brings bar discipline cases consistent with most other court filings, which are required to be done electronically. Also within subdivision (c)(1), non-substantive changes clarify confusing language regarding the jurisdictional nature of notices to seek review and cross-review.

In subdivision (c)(2), the non-substantive change is deleting "shall" to remove legalese.

In (c)(4), adds a comma after "argument" to correct grammar.

<p>(5) <i>Burden.</i> [no change]</p> <p>(6) <i>Judgment of Supreme Court of Florida.</i></p> <p>(A) Authority. After review, theThe Supreme Court of Florida will enter an appropriate order or judgment <u>after review</u>. If no review is sought of a <u>referee's</u> 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.</p> <p>(B) Form. The court's judgment may include judgment in favor of <u>any</u>:</p> <ul style="list-style-type: none"> (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. <p>(7) <i>Procedures on Motions to Tax Costs.</i> 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</p>	<p>Non-substantive changes in subdivisions (c)(5)(A) and (b) are made to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p> <p>Non-substantive changes in subdivision (c)(7) are made to comport with this Court's administrative order AOSC06-14,</p>
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<p>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, <u>the court will remand the motion</u> 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.</p> <p>(d) Precedence of Proceedings. [no change]</p> <p>(e) Extraordinary Writs. [no change]</p> <p>(f) Florida Rules of Appellate Procedure. [no change]</p> <p>(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 <u>in a disciplinary proceeding</u> and the proceedings on the petition may be filed in and determined by the court or as provided under rule 3-7.11(f).</p> <p>(h) Pending Disciplinary Cases. If the court orders disbarment or disciplinary revocation, that order may include the dismissal without prejudice of other pending <u>disciplinary</u> cases against the respondent. <u>If the revocation is granted by the court, the revocation dismisses all pending disciplinary cases against that respondent.</u></p>	<p>dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p> <p>Non-substantive changes in subdivision (g) are made to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p> <p>Within subdivision (h), removes disciplinary revocation from cases in which other pending disciplinary cases may be dismissed. Adds that</p>
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Comment	
[no change]	<p>other pending disciplinary cases will be dismissed when disciplinary revocation is granted. The amendments make subdivision (h) consistent with Rule 3-7.12(d) on disciplinary revocation, which was amended after rule 3-7.7(h) was adopted and states that the order granting disciplinary revocation will dismiss all pending disciplinary cases.</p>

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 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

Within subdivisions (a) and (b), removes "bar counsel" and "staff counsel" from the second sentence to clarify that it is the designated reviewer who must approve a consent judgment. The amendments ensure that the appropriate constituent of the client, the designated reviewer, reviews and approves rejection of an offer by a respondent and bar counsel alone cannot reject an offer by a respondent.

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.

In subdivisions (c), (d), (e), and (f), non-substantive changes to remove legalese are made to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*.

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~~that event, the disbarment on consent ~~shall~~must set forth a brief recitation of the allegations underlying the disbarment on consent. This option ~~shall~~is only be 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

In subdivision (a), non-substantive changes are made to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*.

Within subdivision (b)(1), adds electronic filing in a manner approved by the Court. The Supreme Court of Florida often receives boxes of paper that constitute filing of an appeal. Changes would make bar cases consistent with other court cases and require electronic filing of documents. This will be easier for the Court to maintain and also easier for any part to determine the official record solely from the electronic filings. The change also brings bar discipline cases consistent with most other court filings, which are required to be done electronically. The non-substantive change in subdivision (b)(1) correcting the title of the

<p>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 <u>petitioner's</u> character and fitness of the petitioner to resume the practice of law.</p> <p>(c) Deposit for Cost. [no change]</p> <p>(d) Reference of Petition for Hearing. [no change]</p> <p>(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 <u>evidence</u> to the referee evidence that, in the opinion of the referee or lawyer, will be considered in passing on the petition.</p> <p>(f) Determination of Fitness by Referee HearingReferee 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. <u>The referee may not refer the petition to civil or grievance mediation.</u> The referee must decide the <u>petitioner's fitness</u> 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</p>	<p>Florida Rules of General Practice and Judicial Administration was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Changes to subdivision (b)(2) are non-substantive changes to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>.</p> <p>The non-substantive change of amending the title of subdivision (f) was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules</i></p>
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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) [no change]
- (B) [no change]
- (C) [no change]
- (D) [no change]
- (E) [no change]
- (F) [no change]
- (G) [no change]
- (H) [no change]
- (I) [no change]
- (J) [no change]
- (K) [no change]
- (L) [no change]

Submissions. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*. Other non-substantive changes to subdivision (f) were approved by the Board of Governors to comport this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*

<p>(M) [no change]</p> <p>(N) failure of a felony-suspended lawyer to submit proof that the affected lawyer’s civil rights have been restored; and</p> <p>(O) <u>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</u></p> <p>(P) <u>any other conduct that adversely reflects on the character or fitness of the applicant.</u></p> <p>(2) <i>Determination of Character and Fitness.</i> [no change]</p> <p>(A) [no change]</p> <p>(B) [no change]</p> <p>(C) [no change]</p> <p>(D) [no change]</p> <p>(E) [no change]</p> <p>(F) [no change]</p> <p>(G) [no change]</p> <p>(H) [no change]</p> <p>(I) [no change]</p>	<p>Adds new subdivision (f)(1)(O) that holding out as if eligible to practice is disqualifying conduct in reinstatement proceedings, making the suspended lawyer ineligible for reinstatement to practice law. Subsequent subdivision is renumbered accordingly. The bar has seen reinstatement cases where lawyers have failed to remove themselves from their professional websites and social media pages, making them appear as if they are eligible to practice when they are suspended.</p>
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<p>(J) [no change]</p> <p>(3) <i>Elements of Rehabilitation.</i> 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:</p> <p>(A) [no change]</p> <p>(B) [no change]</p> <p>(C) [no change]</p> <p>(D) [no change]</p> <p>(E) [no change]</p> <p>(F) [no change]</p> <p>(G) [no change]</p> <p>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.</p> <p>(4) <i>Educational Requirements.</i></p>	<p>Changes to subdivision (f)(3) are non-substantive changes to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p>
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<p>(A) [no change]</p> <p>(i) [no change]</p> <p>(ii) [no change]</p> <p>(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), <u>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.</u> 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.</p> <p>(g) Hearing; Notice; Evidence.</p> <p>(1) <i>Notice.</i> 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<u>before</u> the hearing to the petitioner, tolawyers representing The Florida Bar, and to other persons who may be designated by the appointed referee.</p> <p>(2) <i>Appearance.</i> 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.</p>	<p>Within subdivision (f)(4)(B), clarifies that the bar exam results must be valid as defined by the Rules of the Supreme Court Relating to Admissions to the Bar at the time the petition for reinstatement is filed. The rule is not entirely clear. The bar has recently had reinstatement cases in which, based on the language of the current rule, it was unclear whether the bar exam results, which would be invalid under Rules of the Supreme Court Relating to Admissions to the Bar rules, could be accepted for reinstatement. The addition creates a bright light that is enforceable.</p> <p>The non-substantive change of the title to subdivision (g)(3) and rearranging the content of the new language in (g)(4) was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006,</p>
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~~(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 ~~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. [no change]

(i) Review. [no change]

In Re: Guidelines for Rules Submissions. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

Other non-substantive changes to subdivisions (g)(1) through (g)(5) were approved by the Board of Governors and are non-substantive changes to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions.*

<p>(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<u>after</u> the date of the suspension or incapacity.</p> <p>(k) Successive Petitions. No <u>person may file a</u> 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<u>after</u> an adverse judgment under this rule.</p> <p>(l) Petitions for Reinstatement to Membership in Good Standing.</p> <p>(1) <i>Availability.</i> [no change]</p> <p>(2) <i>Style of Petition.</i> Petitions must be styled in the Supreme Court of Florida and filed with the Supreme Court of Florida in</p>	<p>Non-substantive changes to subdivision (j) are proposed to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p> <p>The non-substantive change in subdivision (k) of adding "person may file a" in the first sentence was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i> The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>. Other non-substantive changes to subdivision (j) were approved by the Board of Governors</p> <p>Non-substantive changes to subdivision (l) are proposed to</p>
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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) [no change]

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

(C) [no change]

(D) [no change]

(E) [no change]

(F) [no change]

(G) a statement showing all the petitioner's financial obligations of the petitioner, including, but not limited to,

comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions.*

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) [no change]

(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) [no change]

(N) [no change]

(O) [no change]

(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.* [no change]

(m) Costs.

(1) *Taxable Costs.* [no change]

(A) [no change]

(B) [no change]

(C) [no change]

<p>(D) [no change]</p> <p>(E) [no change]</p> <p>(F) [no change]</p> <p>(G) [no change]</p> <p>(H) [no change]</p> <p>(I) [no change]</p> <p>(2) <i>Discretion of Referee.</i> [no change]</p> <p>(3) <i>Assessment of Bar Costs.</i> [no change]</p> <p>(4) <i>Assessment of Petitioner's Costs.</i> [no change]</p> <p>(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.</p> <p>(1) <i>Readmission After Disbarment.</i> 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 a longer period of time as the court might determine in the disbarment order. An order of disbarment that states the</p>	<p>Non-substantive changes to subdivision (n) are proposed to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p>
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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

[no change]

The non-substantive change in subdivision (n)(2) adding "that" was not approved by the Board of Governors, but was made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar *News*.

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.

The rule is reorganized for clarity. Non-substantive changes also remove legalese to comport with this Court’s administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*.

The information in subdivision (a) previously appeared in the non-lettered lead-in.

Within subdivision (b), adds that filing will be in electronic format approved by the court. The rule is also reorganized. The Supreme Court of Florida often receives boxes of paper that constitute filing of an appeal. Changes would make bar cases consistent with other court cases and require electronic filing of documents. This will be easier for the Court to maintain and also easier for any part to determine the official record solely from the electronic filings. The change also

<p>(bc) Judgment. Within 60 days after filing and service of the petition, The Florida Bar shall<u>must</u> file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary revocation <u>within 60 days after service of the petition on the bar.</u> The bar's response shall<u>must</u> be determined by the bar's board of governors. AThe bar must serve a copy of the response shall be served upon the petitioner. The Supreme Court of Florida shall<u>will</u> 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<u>will not</u> adversely affect <u>the public interest,</u> the integrity of the courts, nor hinder the administration of justice, or nor the confidence of the public in the legal profession. If otherwise,<u>The Supreme Court of Florida otherwise will deny</u> the petition shall be denied. If the judgment grants the disciplinary revocation, the<u>A</u> judgment granting disciplinary revocation may require that the disciplinary revocation be subject to appropriate conditions. Such conditions may include <u>including,</u> 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 <u>another time period</u> as the court may order.</p> <p><u>(d) Effect of Disciplinary Revocation.</u> <u>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.</u></p>	<p>brings bar discipline cases consistent with most other court filings, which are required to be done electronically.</p> <p>New subdivision (d) is added to explain in the rule the effect of a disciplinary revocation, which is described in case law. The non-</p>
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<p>(ee) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation shall<u>does</u> not stay the progress of the disciplinary proceedings without the approval of the bar’s board of governors.</p> <p>(df) Dismissal of Pending Disciplinary Cases. If disciplinary revocation is granted by the Supreme Court of Florida under this rule, such<u>the</u> disciplinary revocation shall<u>serves</u> to dismiss all pending disciplinary cases.</p> <p>(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<u>These costs are as</u> authorized elsewhere in these Rules Regulating The Florida Bar.</p> <p style="text-align: center;">Comment</p> <p>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<u>petitions for disciplinary revocation</u> must be determined by the bar’s board of governors. Disciplinary revocation, like the formerly allowed disciplinary resignation, is “tantamount to disbarment.” <i>The Florida Bar v. Hale</i>, 762 So.2d 515, 517 (Fla. 2000). Like disbarred lawyers, lawyers whose licenses have been <u>disciplinarily</u> 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. <i>The Florida Bar v.</i></p>	<p>substantive change in subdivision (d) adding “tantamount to disbarment and” was not approved by the Board of Governors, was proposed by Brian Burgoon to include the language of the comment citing caselaw, and was made under the authority granted to bar staff to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>. The amendment as it appears in this petition was noticed in the full-text on-line version of the official notice in the bar <i>News</i>.</p> <p>Non-substantive changes to subdivisions (e), (f), (g), and the comment are proposed to comport with this Court’s administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>.</p>
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<p>Ross, 732 So.2d 1037, 1041 (Fla. 1998); <i>The Florida Bar v. Hale</i>, 762 So.2d 515, 517 (Fla. 2000).</p>	
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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.* [no change]

(2) *Re-opened Investigations.* [no change]

(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. [no change]

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. [no change]

(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

Non-substantive changes to subdivision (a)(3) to remove legalese are proposed to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions.*

Within subdivision (d) and the new comment, clarifies that the bar will not take action on a complaint against a constitutional officer while that person remains in office. The current rule is unclear, and members of the public have questioned why the bar does not discipline constitutional officers who currently hold office. This

<p>of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.</p> <p style="text-align: center;"><u>Comment</u></p> <p><u>Under Article IV, Section 7 of the Florida Constitution, the governor has the authority to suspend constitutional officers.</u></p>	<p>Court in the case of <i>The Florida Bar v. McCain</i>, 330 So. 2d 712 (Fla. 1976) determined that the bar does not have disciplinary authority over a sitting judge or constitutional officer (such as an elected state attorney or public defender), but after leaving office, those officials are subject to prosecution by the bar for violations of Rules Regulating The Florida Bar committed while in office). <i>See also</i>, e.g., Fla. Const. Art. V, §12, (Judicial Qualifications Commission has disciplinary authority over judges); FN 8, Burgoon, “Florida’s Lawyer Discipline System: What Every Attorney Needs to Know,” <i>Florida Bar Journal</i>, Vol. 95, No. 1 (January/February 2021).</p> <p>New commentary adds that the governor has the authority to remove constitutional officers.</p>
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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. [no change]

In subdivisions (a)(1) and (2), adds the words "or costs" to permit the award of costs in an arbitration proceeding. Disputes over a lawyer's bill often involve the costs of litigation, including office charges for photocopies or online research as well as out of pocket costs for experts, deposition transcripts, filing fees and service of process. The amendment clarifies that in every instance where the determination of a fee is being considered, the rule also permits the determination of a cost.

Non-substantive changes to subdivision (a) are proposed to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*.

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 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. [no change]

(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

Non-substantive changes to subdivision (a) remove legalese to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, *In Re: Guidelines for Rules Submissions*.

In subdivision (b), adds the words "or costs" to permit the award of costs in an arbitration proceeding. Disputes over a lawyer's bill often involve the costs of litigation, including office charges for photocopies or online research as well as out of pocket costs for experts, deposition transcripts, filing fees and service of process. The amendment clarifies that in every instance where the determination of a fee is being considered, the rule also permits the determination of a cost.

Non-substantive changes to subdivision (e) comport with this Court's administrative order

<p>they meet the criteria established by the policies adopted under the authority of this chapter.</p>	<p>AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions.</i></p>
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<p>14-5. EFFECT OF AGREEMENT TO MEDIATE OR ARBITRATE AND FAILURE TO COMPLY</p> <p>RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY</p> <p>(a) Closure of Disciplinary File. A disciplinary file that involves only <u>fees or costs</u> issues shall<u>will</u> be closed without the entry of a sanction upon the entry of an agreement to arbitrate.</p> <p>(b) Effect of Respondent's Failure to Attend or Comply. It shall be a violation of the Rules Regulating The Florida Bar for a<u>A</u> respondent <u>who</u> to<u>fails</u> to attend an agreed-upon arbitration conference without good cause <u>violates the Rules Regulating The Florida Bar</u>. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to<u>who</u> <u>fails</u> to fully comply with the terms of an arbitration award without good cause <u>violates the Rules Regulating The Florida Bar</u>.</p> <p>(c) Effect of Complainant's or Other Opposing Party's Failure to Attend. If<u>The disciplinary file may remain closed if</u> 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.</p>	<p>In subdivision (a), adds the words "or costs" to permit the award of costs in an arbitration proceeding. Disputes over a lawyer's bill often involve the costs of litigation, including office charges for photocopies or online research as well as out of pocket costs for experts, deposition transcripts, filing fees and service of process. The amendment clarifies that in every instance where the determination of a fee is being considered, the rule also permits the determination of a cost.</p> <p>Non-substantive changes to subdivisions (b) and (c) remove legalese to comport with this Court's administrative order AOSC06-14, dated June 14, 2006, <i>In Re: Guidelines for Rules Submissions</i>.</p>
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