APPENDIX C

THE FLORIDA BAR NOTICE OF FILING

October 3, 2022

Notice

Biennial Florida Bar rules proposals

The Board of Governors of The Florida Bar gives notice of filing with the Supreme Court of Florida, on or about October 3, 2022, a petition to amend the Rules Regulating The Florida Bar. A summary of the proposed amendments is printed below. Some are substantive revisions; others are merely editorial refinements. These items will constitute the Bar's annual filing of most rules changes approved by the board since October 5, 2020, but held for this consolidated submission. A copy of this consolidated submission is available online or may be requested by contacting the Rules Administrative Coordinator, The Florida Bar, 651 East Jefferson St., Tallahassee 32399-2300 or calling 850-561-5600, ext. 5751. Members who desire to comment on these proposed amendments may do so within 30 days of the filing of the Bar's petition. Comments must be filed directly with the clerk of the Supreme Court of Florida, and a copy must be served on the executive director of The Florida Bar. Rule 1-12.1, Rules Regulating The Florida Bar, governs these proceedings.

RULE 1-3.5 RETIREMENT

Summary: Re-organizes rule into subdivisions and adds new subdivisions (b)(2) and (b)(3) that require retired lawyers to affirmatively state their retired status when they indicate Florida Bar membership and prohibit retired lawyers from holding themselves out as able to practice Florida law unless they are certified as emeritus lawyers.

RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP

Summary: Within subdivision (f), adds trust account compliance certification, deletes language regarding relation back, and adds that the member is not in violation of the rules.

RULE 1-7.3 MEMBERSHIP FEES

Summary: Within subdivision (a), changes inactive under rule 3-7.13 to incapacitated.

BYLAW 2-9.7 INSURANCE FOR MEMBERS OF BOARD OF GOVERNORS, OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND EMPLOYEES

Summary: Adds former board members, officers, grievance committee, unlicensed practice of law, and clients' security fund committee members and former employees to those covered by insurance and indemnification for acts committed in their capacity doing bar work.

RULE 3-2.1 GENERALLY

Summary: Reorders and reletters subdivisions so that the definitions are in alphabetical order.

RULE 3-5.1 GENERALLY

Summary: Within subdivision (b)(1), adds potential or actual harm to the factors which will not lead to minor misconduct absent unusual circumstances. Within subdivision (b)(3), clarifies procedure for handling rejection of minor misconduct, including changing the time to accept an offer of minor misconduct from 15 to 30 days. Within subdivision (b)(5), adds board of governors as the finder of probable cause for admission of minor misconduct and changes the time period for tendering an admission of minor misconduct from 15 to 30 days. Within subdivision (d), removes references to publication in the Southern Reporter.

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

Summary: Within subdivisions (a)(8), (a)(10), (b)(3), and (c)(5), adds electronic filing in a manner approved by the Court.

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

Summary: Adds new subdivision (h) to provide for diversion before the filing of a formal complaint.

Rule 3-6.1 GENERALLY

Summary: Within subdivision (a), clarifies that lawyers who are suspended or disbarred and employed in some capacity by a law firm are subject to the rule's requirements and prohibitions where recommend for hire by a law firm and hired directly by the client as well as when employed directly by the law firm.

RULE 3-7.1 CONFIDENTIALITY

Summary: Within subdivisions (a)(2), (3) and (5), clarifies when disciplinary information becomes public. Within subdivision (a)(3), changes rule reference from "3-3.2(a)" to "3-3.2(b)." Within subdivision (a)(5), adds "and fee arbitration" in title and rule text. Within subdivision (j), changes "or might cause embarrassment in any future disciplinary matter" to "not be admitted as evidence in disciplinary proceedings under these rules."

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

Summary: Within subdivision (a), adds "written" to clarify the bar reviews written inquiries. Within subdivision (b), adds reference to Rule 3-7.11 on subpoena issuance.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

Summary: Within subdivision (n) clarifies procedure for rejection of admonishment and makes 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. Within subdivision (e), changes "board of governors" to "appropriate

to 30 days. Within subdivision (b)(5), adds board of governors as the finder of probable cause for admission of minor misconduct and changes the time period for tendering an admission of minor misconduct from 15 to 30 days. Within subdivision (d), removes references to publication in the Southern Reporter.

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Summary: Within subdivision (n) clarifies procedure for rejection of admonishment and makes 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. Within subdivision (e), changes "board of governors" to "appropriate designated reviewer." Within subdivision (c), adds reference to subpoena procedure in Rule 3-7.11.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

Summary: Within subdivisions (h)(5)(A), (h)(5)(B), (m)(3), (n)(3), adds that filing will be in electronic format approved by the court.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

Summary: Within subdivision (h), removes disciplinary revocation from cases in which dismissal of other pending disciplinary cases may be dismissed. Adds that other pending disciplinary cases will be dismissed when disciplinary revocation is granted. Within subdivision (c)(1), adds electronic filing in a manner approved by the Court. Within subdivision (c)(1), clarifies confusing language regarding jurisdictional nature of notices to seek review and cross-review.

RULE 3-7.9 CONSENT JUDGMENT

Summary: 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.

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

Summary: 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 with subsequent subdivision renumbered accordingly. 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. Within subdivision (b)(1), adds electronic filing in a manner approved by the Court.

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

Summary: Within subdivision (b), adds that filing will be in electronic format approved by the court. Rule is also reorganized.

RULE 3-7.16 LIMITATION ON TIME TO OPEN INVESTIGATION

Summary: Within subdivision (d), clarifies that the bar will not take action on a complaint against a constitutional officer while that person remains in office. New commentary clarifies that the governor has the authority to remove constitutional officers.

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

Summary: Removes "to another" in subdivision (b)(2). Adds new subdivision (c)(7) to permit a lawyer to disclose information reasonably necessary to respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law, and adds similar commentary addressing the issue.

RULE 4-3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

Summary: Within the commentary, removes references to American Bar Association Standards of Criminal Justice Relating to Prosecution Function.

RULE 4-7.12 REQUIRED CONTENT

Summary: Within subdivision (c), changes "reasonably prominent" to "clear and conspicuous" to describe the requirements for all required information and provides information on what is meant by the term. Adds commentary further clarifying the meaning of "clear and conspicuous."

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

Summary: Within subdivisions (b)(5), (b)(6) and (b)(7), replaces "reasonably prominent" with "clear and conspicuous." Within subdivision (b)(6), divides subdivision into (b)(6) and (b)(7), makes disclaimers required only when necessary to avoid misleading a reasonable viewer, and makes wording of disclaimer discretionary.

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

Summary: Within subdivision (a)(4)(B), omits the requirement that lawyers certified by entities accredited by the American Bar Association, but not The Florida Bar, contain a disclaimer that the lawyer is "Not Certified as a Specialist by The Florida Bar." Within subdivision (a)(6), replaces "reasonably prominent" with "clear and conspicuous" and adds commentary describing "clear and conspicuous."

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

Summary: Within subdivision (a)(1), adds social media contact information including social media icons or logos.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Summary: Within subdivision (b)(2)(B), replaces "reasonably prominent" and contrasting for the "advertisement" mark for direct mail to "clear and conspicuous" and provides direction on the meaning of "clear and conspicuous." Within subdivision (b)(2)(E), deletes the first sentence required for targeted direct mail "If you have already retained a lawyer for this matter, please disregard this letter." Makes current subdivisions (b)(2)(H) and (b)(2)(I) [proposed subdivisions (b)(2)(G) and (b)(2)(H)] consistent using a "know or reasonably should know" standard for whether the direct advertisement is targeted (prompted by a specific event affecting the intended recipient). Adds commentary addressing the prohibition against disclosing the nature of the prospective client's legal problem and indicating that the prohibition does not apply in circumstances where an occurrence has a widespread impact but the advertising lawyer does not specifically know that the recipient was impacted by the occurrence.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

Summary: Adds new subdivision (d)(12) which requires that lawyers cannot participate with a qualifying provider unless the qualifying provider has lawyers from at least 4 different law firms participating.

RULE 5-1.1 TRUST ACCOUNTS

Summary: Within subdivision (g)(1)(E) and (g)(5)(A), adds business or consumer money market account or sub account, any business or consumer savings account or sub account without a maturity date.

Within subdivision (g)(5)(B), adds that eligible institutions must provide a minimum interest rate for IOTA accounts and creates minimum interest rates tied to specific indexed rate points.

RULE 6-3.6 RECERTIFICATION

Summary: Within subdivision (b)(4), changes terminology of current requirement to membership in good standing rather than a list of reasons a lawyer could fail to be in good standing.

RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS

Summary: In subdivision (b), changes "mental illness awareness" to "mental health and wellness."

RULE 6-12.4 DEFERMENT AND EXEMPTION

Summary: Deletes subdivision (a)(1)(E) and the first sentence of subdivision (c)(1) regarding deferment from Practicing With Professionalism as obsolete given the number of years since its omission, as all those lawyers who would be eligible for the deferment would have already sought and been granted the deferment. Within subdivision (c)(2), changes the number of required hours from 30 to 33 for foreign practice exemption from the required practicing with professionalism program.

RULE 6-22.1 GENERALLY

Summary: Adds that the area is closed to new applicants and other language in the rule is changed accordingly.

RULE 6-22.3 MINIMUM STANDARDS

Summary: Adds that the area is closed to new applicants and deletes the standards for initial certification, moving "protracted litigation" information into rule 6-22.4.

CHAPTER 11. RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM

Summary: Within Rule 11-1.2, deletes subdivision (f) regarding determination of indigency.

RULE 14-1.2 JURISDICTION

Summary: In subdivisions (a)(1) and (2), adds the words "or costs" to permit the award of costs in an arbitration proceeding.

RULE 14-4.1 ARBITRATION PROCEEDINGS

Summary: In subdivision (b), adds the words "or costs" to permit the award of costs in an arbitration proceeding.

RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY

Summary: In subdivision (a), adds the words "or costs" to permit the award of costs in an arbitration proceeding.

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RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY
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RULE 19-1.5 RELATIONSHIP TO THE SUPREME COURT COMMISSION ON PROFESSIONALISM
Summary: Deletes rule in its entirety.

RULE 20-5.1 GENERALLY (adding character & fitness)
Summary: Adds subdivision (h) to include a character and fitness evaluation.

RULE 21-3.1 CONTINUING LEGAL EDUCATION (Replace illness with health and wellness)
Summary: In rule 21-3.1(c), replaces "illness" with "health and wellness."

BIENNIAL FLORIDA BAR RULES PROPOSALS

The Florida Bar News

Aug 25, 2022 Announcements

Biennial Florida Bar rules proposals

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RULES REGULATING THE FLORIDA BAR

CHAPTER 1 GENERAL
1-3. MEMBERSHIP
RULE 1-3.5 RETIREMENT

(a) Eligibility. Any member of The Florida Bar ~~up~~on petition or other written request to, and approval of, the executive director.

(b) Practice of Law Prohibited.

(1) A retired member ~~shall~~must not practice law in this state ~~except upon petition for reinstatement~~unless reinstated to active membership in good standing by the executive director or unless certified as an emeritus lawyer under chapter 12 of these rules, but only for those activities permitted under chapter 12 of these rules~~, and approval of, the executive director; the payment of all membership fees, costs, or other~~

~~amounts owed to The Florida Bar; and the completion of all outstanding continuing legal education or basic skills course requirements~~.

(2) Retired members must affirmatively represent their retired status when any statement of Florida Bar membership is made, e.g., when in writing, Esquire (Ret.) or Member, Florida Bar (Ret.).

(3) Retired members must not hold themselves out as being able to practice law in Florida or render advice on matters of Florida law unless certified as an emeritus lawyer under chapter 12 of these rules.

(c) Reinstatement. To be reinstated to active membership in good standing, a retired member must:

(1) complete the reinstatement application;

(2) pay all membership fees, costs, or other amounts owed to The Florida Bar;

(3) complete all outstanding continuing legal education or basic skills course requirements as stated elsewhere in these rules; and

(4) be approved for reinstatement by the executive director.

(d) Permanent Retirement. A member who ~~seeks and~~ is approved to permanently retire ~~shall~~is not ~~be~~ eligible for reinstatement or readmission. A retired member ~~shall be~~is entitled to receive ~~such~~ other privileges as the board of governors ~~may~~ authorizes.

(e) Discipline. A retired member ~~shall~~ remains subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness ~~to resume~~for reinstatement to the practice of law in Florida as elsewhere stated in these ~~Rules Regulating The Florida Bar~~rules.

(f) Referral to Board of Governors. If the executive director is in doubt as to disposition of a petition, the executive director may refer the petition to the board of governors for its action.

(g) Review of Disposition. Action of the executive director or board of governors denying a petition for retirement or reinstatement from retirement may be reviewed ~~up~~on petition to the Supreme Court of Florida.

RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP

(a) Eligibility for Reinstatement. Members who have retired or been delinquent for a period of time not in excess of 5 years are eligible for reinstatement under this rule. Time will be calculated from the day of the retirement or delinquency.

Inactive members may also seek reinstatement under this rule.

(b) Petitions Required. A member seeking reinstatement must file a petition with the executive director setting forth the reason for inactive status, retirement, or delinquency and showing good cause why the petition for reinstatement should be granted. The petitioner must include all required information on a form approved by the board of governors. The petition must be accompanied by a nonrefundable reinstatement fee of $150 and payment of all arrearages unless adjusted by the executive director with concurrence of the executive committee for good cause shown. Inactive members are not required to pay the reinstatement fee. No member will be reinstated if, from the petition or from investigation conducted, the petitioner is not of good moral character and morally fit to practice law or if the member is delinquent with the continuing legal education or basic skills course requirements.

If the executive director is in doubt as to approval of a petition, the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for reinstatement may be reviewed on petition to the Supreme Court of Florida.

(c) Members Who Have Retired or Been Delinquent for Less Than 5 Years, But More Than 3 Years. Members who have retired or been delinquent for less than 5 years, but more than 3 years, must complete 11 hours of continuing legal education courses for each year or portion of a year that the member had retired or was deemed delinquent.

(d) Members Who Have Retired or Been Delinquent for 5 Years or More. Members who have retired or have been deemed delinquent for a period of 5 years or longer will not be reinstated under this rule and must be readmitted upon application to the Florida Board of Bar Examiners and approval by the Supreme Court of Florida.

(e) Members Who Have Permanently Retired. Members who have permanently retired will not be reinstated under this rule.

(f) Members Delinquent 60 Days or Less. ~~Reinstatement~~Any member reinstated from delinquency for payment of membership fees, trust account compliance certification, or completion of continuing legal education or basic skills course requirements approved within 60 days from the date of delinquency i~~s effective on the last business day before the delinquency. Any member reinstated within the 60-day period~~ is not considered in violation of these rules and is not subject to disciplinary sanction for practicing law in Florida during that time.

(g) Inactive Members. Inactive members may be reinstated to active membership in good standing to become eligible to practice law in Florida by petition filed with the executive director, in the form and as provided in (b) above, except:

(1) If the member has been inactive for greater than 5 years, has been authorized to practice law in another jurisdiction, and either actively practiced law in that jurisdiction or held a position that requires a license as a lawyer for the entire period of time, the member will be required to complete the Florida Law Update continuing legal education course as part of continuing legal education requirements.

(2) If the member has been inactive for greater than 5 years and does not meet the requirements of subdivision (1), the member will be required to complete the basic skills course requirement and the 33-hour continuing legal education requirement.

(3) An inactive member is not eligible for reinstatement until all applicable continuing legal education requirements have been completed and the remaining portion of membership fees for members in good standing for the current fiscal year have been paid.

1-7. MEMBERSHIP FEES AND FISCAL CONTROL
RULE 1-7.3 MEMBERSHIP FEES

(a) Membership Fees Requirement. On or before July 1 of each year, every member of The Florida Bar must pay annual membership fees to The Florida Bar in the amount of $265 per annum, except those members who have retired, resigned, been revoked or disbarred, or been classified as ~~inactive members under rule 3-7.13~~incapacitated. Every member of The Florida Bar must pay the membership fee and concurrently file a fee statement with any information the board of governors requires.

(b) Prorated Membership Fees. Membership fees will be prorated for anyone admitted to The Florida Bar after July 1 of any fiscal year. The prorated amount will be based on the number of full calendar months remaining in the fiscal year at the time of their admission.

Unpaid prorated membership fees will be added to the next annual membership fees bill with no penalty to the member. The Florida Bar must receive the combined prorated and annual membership fees payment on or before August 15 of the first full year fees are due unless the member elects to pay by installment.

(c) Installment Payment of Membership Fees. Members of The Florida Bar may elect to pay annual membership fees in 3 equal installments as follows:

(1) in the second and third year of their admission to The Florida Bar;

(2) if the member is employed by a federal, state, or local government in a non-elected position that requires the individual to maintain membership in good standing within The Florida Bar; or

(3) if the member is experiencing an undue hardship.

A member must notify The Florida Bar of the intention to pay membership fees in installments. The first installment payment must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and third installment payments postmarked after their respective due dates are subject to a one-time late charge of $50. The late charge must accompany the final payment. The executive director, with concurrence of the executive committee, may adjust the late charge.

The Florida Bar will send written notice to the last official bar address of each member who has not paid membership fees and late fees by February 1. Written notice may be by registered or certified mail, or by return receipt electronic mail. The member will be a delinquent member if membership fees and late charges are not paid by March 15. The executive director, with concurrence of the executive committee, may adjust these fees or due date for good cause.

Each member who elects to pay annual membership fees in installments may be charged an additional administrative fee set by the board of governors to defray the costs of this activity.

(d) Election of Inactive Membership. A member in good standing may elect to be classified as an inactive member. This election must be indicated on the annual membership fees statement and received by The Florida Bar by August 15. If the annual membership fees statement is received after August 15, the member's right to inactive status is waived until the next fiscal year. Inactive classification will continue from fiscal year to fiscal year until the member is reinstated as a member in good standing who is eligible to practice law in Florida. The election of inactive status is subject to the restrictions and limitations provided elsewhere in these rules.

Membership fees for inactive members are $175 per annum.

(e) Late Payment of Membership Fees. Payment of annual membership fees must be postmarked no later than August 15. Membership fees payments postmarked after August 15 must be accompanied by a late charge of $50. The Florida Bar will send written notice to the last official bar address of each member whose membership fees have not been paid by August 15. Written notice may be by registered or certified mail, or by return receipt electronic mail. The member is considered a delinquent member on failure to pay membership fees and

any late charges by September 30, unless adjusted by the executive director with concurrence of the executive committee.

(f) Membership Fees Exemption for Activated Reserve Members of the Armed Services. Members of The Florida Bar engaged in reserve military service in the Armed Forces of the United States who are called to active duty for 30 days or more during the bar's fiscal year are exempt from the payment of membership fees. The Armed Forces of the United States includes the United States Army, Air Force, Navy, Marine Corps, Coast Guard, as well as the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. Requests for an exemption must be made within 15 days before the date that membership fees are due each year or within 15 days of activation to duty of a reserve member. To the extent membership fees were paid despite qualifying for this exemption, the membership fee will be reimbursed by The Florida Bar within 30 days of receipt of a member's request for exemption. Within 30 days of leaving active duty status, the member must report to The Florida Bar that the member is no longer on active duty status in the United States Armed Forces.

CHAPTER 2 BYLAWS OF THE FLORIDA BAR
2-9. POLICIES AND RULES
BYLAW 2-9.7 INSURANCE FOR MEMBERS OF BOARD OF GOVERNORS, OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND EMPLOYEES

The bar will provide insurance coverage for current and former members of the board of governors, officers of The Florida Bar, members of UPL, clients' security fund, and grievance committees, and employees of The Florida Bar as authorized by the budget committee and included in the budget. The bar will indemnify current and former officers, board of governors, UPL, clients' security fund, and grievance committee members and bar employees as provided in the standing board policies.

CHAPTER 3 RULES OF DISCIPLINE

3-2. DEFINITIONS
RULE 3-2.1 GENERALLY

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

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

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

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

(~~c~~d) 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.

(~~d~~e) This Court or the Court. This court or the court is the Supreme Court of Florida.

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

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

(~~f~~h) 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.

(~~g~~i) Executive Committee. Executive committee is the executive committee of the board of governors of The Florida Bar.

(~~h~~j) 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.

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

(~~j~~m) 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.

(~~k~~n) 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.

(~~l~~o) 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.

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

(~~n~~q) 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.

(~~o~~r) Staff Counsel. Staff counsel is a lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty

pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

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

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

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

3-5 TYPES OF DISCIPLINE
RULE 3-5.1 GENERALLY

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

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

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

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

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

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

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

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

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

(~~F~~G) the misconduct constitutes the commission of a felony under applicable law.

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

(3) *Recommendation of Minor Misconduct*. If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee

concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of $1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the disciplinary review committee by the designated reviewer ~~[~~as provided elsewhere in ~~rule 3-7.5(b)]~~these rules, the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within ~~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 misconduct~~. At trial before a referee following a respondent's rejection ~~by a respondent~~ of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct*. A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within ~~15~~30 days after service of a notice of a finding of probable cause by a grievance committee or the board of governors. An admission of minor misconduct may be conditioned on acceptance by the grievance committee or the board of governors, but the respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is

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

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

(1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;

(2) supervision of all or part of the respondent's work by a member of The Florida Bar;

(3) required reporting to a designated agency;

(4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;

(5) supervision over fees and trust accounts as the court directs; or

(6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. The respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar, on

failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

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

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

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

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

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

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

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

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again ~~up~~on full compliance with the rules and regulations governing admission to

the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or ~~such other~~another period of time in excess of 5 years contained in ~~said~~that order.

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

(1) ~~all of the respondent's~~ clients of the respondent with matters pending in the respondent's practice;

(2) ~~all~~ opposing counsel or co-counsel in the matters listed in (1), above;

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

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

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

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

(j) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee, or that the respondent has converted trust funds or property. The amount of restitution will be specifically set forth in the disciplinary order or agreement ~~and will not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee will not exceed the amount of the fee, or in the case of conversion will not exceed the amount of the conversion established in disciplinary proceedings~~. Restitution for an excessive fee will not exceed the amount by which that fee is clearly excessive. Restitution for a prohibited or illegal fee will not exceed the amount of the fee. Restitution for a conversion will not exceed the amount of the conversion established in disciplinary proceedings. The disciplinary order or agreement ~~will also~~must state to whom restitution must be made and the date by which it must be completed. Failure to comply with the order or agreement will cause the respondent to become a delinquent member and will not preclude further proceedings under these rules. The respondent must provide the bar with telephone numbers and current addresses of all individuals or entities to whom the respondent is ordered to pay restitution.

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

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

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

(2) *Discipline by Foreign Jurisdiction.* The Supreme Court of Florida may issue an order suspending the lawyer on an emergency

basis under this chapter on petition of The Florida Bar, authorized by its president, president-elect, or executive director and supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbarring a lawyer from the practice of law ~~under rule 3-7.2~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *Hearings on Issues Raised in Petitions for Interim Probation.* Once the Supreme Court of Florida has granted a petition for interim probation under this rule, the referee appointed by the court will hear

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

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

(c) Trust Accounts.

(1) *Effect of Order Restricting Lawyer Trust Account.* Any order of emergency suspension, ~~or~~interim probation, or interim placement on the inactive list that restricts the ~~attorney~~lawyer in maintaining a trust account will be served on the respondent and any bank or other financial institution maintaining an account against which the respondent may make withdrawals. The order ~~serves as an injunction to prevent~~enjoins the bank or financial institution from making further payment from the trust account or accounts on any obligation, except in accordance with restrictions imposed by the court through subsequent orders issued by a court-appointed referee. Bar counsel will serve a copy of the Supreme Court of Florida's order freezing a lawyer's trust account via first class mail on any bank in which the respondent's trust account is held.

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

(~~1~~3) *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.

(~~2~~4) *Notice by Bar.* ~~Bar counsel and bar auditors~~The bar will provide information to the appointed referee from bar audits and other existing information regarding persons claiming ~~ownership of~~entitlement to frozen trust account funds. The bar will notify persons known to bar staff in writing via regular first class mail of their possible interest in funds contained in the frozen trust account. The notices will include a copy of the form of a petition requesting release of frozen trust account funds to be filed with the referee and instructions for completing the form. The bar will publish in the local county or city newspaper published where the lawyer practiced before suspension a notice informing the public that the lawyer's trust account has been frozen and those persons with claims on the funds should contact listed bar counsel within 30 days after publication whenever possible.

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

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

~~(d) Referee Review of Frozen Trust Account Petitions.~~ (7) *Referee Review of Frozen Trust Account Petitions.* The referee determines when and how to pay the claim of any person entitled to funds in the frozen trust account after reviewing the bar's audit report, the lawyer's trust account records, the petitions filed, or the receiver's recommendations. The referee may hold a hearing if the bar's audit report or other reliable evidence shows that funds have been stolen or misappropriated from the lawyer's trust account. Subchapter 3-7 will not apply to a referee hearing under this rule. No pleadings may be filed other than petitions requesting release of frozen trust account funds. The parties to this referee proceeding are those persons filing a petition requesting release of frozen trust account funds. The bar is not a party to the proceeding. The referee's order is the final order in the matter unless one of the parties petitions for review of the referee's order to the Supreme Court of Florida. The sole issue before the referee is determination of ~~ownership of~~entitlement to the frozen trust account funds. The referee determines the percentage of monies missing from the respondent's trust account and the amounts owing to those petitioners requesting release of frozen trust account funds. The referee will order a pro rata distribution if there are insufficient funds in the account to pay all claims in full. ~~The referee's final order is subject only to direct petition for review by a party claiming an ownership interest in the frozen trust funds. The petition for review must be filed within 60 days of the referee's final order. The schedule for filing of briefs in the appellate process is as set forth in subchapter 3-7 of these rules.~~

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

(9) *Review by Supreme Court of Florida.* The referee's final order is subject only to direct petition for review by a party claiming entitlement

to the frozen trust account funds. The petition for review must be filed within 60 days of the referee's final order. Briefing schedules after the petition for review is filed are set forth in subchapter 3-7 of these rules.

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

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

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

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

~~violations of the Rules Regulating The Florida Bar that establishes that the respondent is causing great public harm.~~

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

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

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

(~~m~~d) 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.

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

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

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

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

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

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

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

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

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

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

(~~h~~i) Diversion at Trial Level.

(1) *Agreement of the Parties*. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional pleas provided elsewhere in these rules ~~shall~~ apply to diversion at the trial level.

(2) *After Submission of Evidence*. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of guilt, the referee determines that, if proven, the conduct

alleged to have been committed by the respondent is not more serious than minor misconduct.

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

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

(5) *Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program*. 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.

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

(~~j~~k) 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~~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.

(~~k~~*l*) 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~~The bar may reopen its disciplinary file and conduct further proceedings under these rules if a respondent fails to complete all requirements of the practice and professionalism enhancements program(s) to which the respondent is diverted, including payment of associated costs. Failure to complete the practice and professionalism enhancement program ~~shall be considered as~~is an ~~matter of aggravation~~aggravating factor when imposing a disciplinary sanction.

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

Comment

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

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

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

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

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

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

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

(b) Employment by Former Subordinates Prohibited. An individual subject to this rule may not be employed or supervised by a lawyer whom the individual subject to this rule employed or supervised before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation order.

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

(d) Prohibited Conduct.

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

(2) *Trust Funds or Property.* Individuals subject to this rule must not receive, disburse, or otherwise handle trust funds or property as defined in chapter 5 of these rules. Individuals subject to this rule must

not act as fiduciaries for any funds or property of their clients or former clients, their employers' clients or former clients, or the clients or former clients of any entity in which ~~their~~an employer is a beneficial owner.

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

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

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

Comment

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

receiving, disbursing, or handling trust funds or property or acting as a fiduciary regarding funds or property of the current or former clients of these individuals, the entities employing them, or any other entity in which the employer is a beneficial owner.

3-7. PROCEDURES
RULE 3-7.1 CONFIDENTIALITY

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

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

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

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

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

been filed under rule 3-3.2(b) without a finding of probable cause are public on filing the complaint.

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

(5) *Diversion or Referral to Grievance Mediation and Fee Arbitration Program*. Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation and fee arbitration program is public information ~~on the entry of such a recommendation~~.

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

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

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

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

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

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

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

(b) Public Record. The public record consists of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, recordings, or transcripts of hearings furnished to, served on, or received from the respondent or the complainant.

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

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

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

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

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

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

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

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

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

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

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

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

It is the purpose of this subdivision to encourage lawyers, judges, and justices to voluntarily seek advice, counsel, and treatment available to lawyers, judges, and justices, without fear that the fact it is sought or rendered will ~~or might cause embarrassment in any future disciplinary~~

~~matter~~be admitted as evidence in disciplinary proceedings under these rules.

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

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

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

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

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

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

(m) Maintaining Confidentiality Required by Rule or Law. The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Gen. Prac. & Jud. Admin. 2.420. It will be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that the documents or information contain material that is exempt from disclosure under applicable rule or law and request that exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records

must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

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

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

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

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

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

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

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

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

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

disciplinary proceedings and ~~the matter shall~~ becomes public ~~information~~in accordance with this subchapter.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

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

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

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

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

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

(f) Counsel and Investigators. ~~Upon request of a grievance committee, staff~~Staff counsel may appoint a bar counsel or an investigator

to assist the grievance committee in an investigation, at the committee's request. Bar counsel ~~shall~~will assist each grievance committee in carrying out its investigative and administrative duties and ~~shall~~will prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recommended discipline for minor misconduct, and letters of advice after no probable cause findings.

(g) Quorum, Panels, and Vote.

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

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

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

(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and ~~to~~ produce evidence, as any other witness, unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. ~~At a reasonable time before any finding of~~

~~probable cause or minor misconduct is made, the~~The bar must advise the respondent ~~shall be advised o~~f the conduct that is being investigated and the rules that may have been violated at a reasonable time before any finding of probable cause or minor misconduct is made. The bar must provide the respondent ~~shall be provided~~ with all materials considered by the committee and ~~shall be given~~give the respondent an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

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

(j) Finding of No Probable Cause.

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

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

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

(4) *Disposition of Committee Files*. ~~Upon the termination of the grievance committee's investigation, the committee's~~The committee will forward its file ~~shall be forwarded~~ to bar counsel for disposition ~~in accord with~~under established bar policy.

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

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

order the chief judge of the appropriate circuit to assign a referee to try the ~~cause~~case. A copy of the record ~~shall~~will be made available to the respondent at the respondent's expense.

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

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

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

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

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees.

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

(2) *Minimum Qualifications*. To be eligible for appointment as a referee under this rule, the judge must have previously served as a judicial referee in proceedings instituted under these rules before February 1, 2010, at 12:01 a.m., or must have received the referee training materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed.

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

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

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

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

(f) Nature of Proceedings.

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

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

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

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

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

(1) *Complaint; Consolidation and Severance*.

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

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

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

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

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

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

(5) *Filing and Service of Pleadings*.

(A) Before Appointment of Referee. Any pleadings filed in a case before appointment of a referee must be filed with the Supreme Court of Florida <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.

(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.

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

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

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

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

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

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

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding and has no rights other than those of any other witness. The referee may grant the complaining witness the right to be

present at any hearing when the respondent is also present after the complaining witness has testified during the case in chief, unless the complaining witness' presence is found to be impractical due to unreasonable delay or other good cause. A complaining witness may be called on to testify and produce evidence as any other witness. The bar may proceed with trial regardless of a ~~complainant's~~complaining witness' lack of cooperation or any settlement, compromise, or restitution between the respondent and ~~complainant~~complaining witness. The complaining witness has no right to appeal.

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

(m) Referee's Report.

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

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

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

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

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

(D) the respondent's disciplinary history on record with the bar's executive director or that otherwise becomes known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior

disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

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

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

(n) The Record.

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

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

(3) *Preparation and Filing*. The referee, with the assistance of bar counsel, prepares the record, certifies that the record is complete, serves a copy of the index of the record on the respondent and The Florida Bar, and files the record with the office of the clerk of the Supreme Court of Florida in an electronic format approved by the supreme court.

(4) *Supplementing or Removing Items from the Record*. The respondent and The Florida Bar may seek to supplement the record or

have items removed from the record by filing a motion with the referee within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

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

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

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

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

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

(p) Cost of Review or Reproduction.

(1) The bar's charge for reproduction for the purposes of these rules is determined and published annually by the executive director. In addition to reproduction charges, the bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings and identification of documents to be reproduced.

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

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

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

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

(q) Costs.

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

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

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

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

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

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

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

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

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

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

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

Court Comment

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

Comment

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

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

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

(a) Right of Review.

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

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

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

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

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

(1) *Notice of Intent to Seek Review of Report of Referee.* A party to a bar disciplinary proceeding ~~seeking review of a report of referee~~ must ~~give~~file notice of ~~that~~ intent to seek review of a referee's report, specifying any portion of the referee's report to be reviewed, within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida in an electronic format approved by the Supreme Court of Florida. The Florida Bar will provide prompt written notice of the board's action, if any, to the respondent. ~~The proceeding begins by filing with the Supreme Court of Florida notice of intent to seek review of a report of referee, specifying those portions of the report of a referee sought to be reviewed. Within 20 days after service of the notice of intent to seek review, the~~The opposing party may file a cross-notice for review specifying any additional portion of the referee's

report for which that party seeks review within 20 days after service of the notice. The filing of the notice or cross-notice to seek review is jurisdictional ~~as to a review to be procured as a matter of~~, and the party who fails to timely file notice loses supreme court review as a right.~~, but the~~ The court may, in its discretion, consider a late-filed notice or cross-notice on a showing of good cause.

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

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

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

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

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

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

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

(i) ~~the~~ party to whom costs are awarded;

(ii) ~~the~~ person~~(s)~~ to whom restitution is ordered; or

(iii) ~~the~~ person~~(s)~~ to whom a fee is ordered to be forfeited.

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

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

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

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

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

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

Comment

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

RULE 3-7.9 CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. If ~~before a formal complaint is filed~~ a respondent states a desire to plead guilty before a formal complaint is filed, bar counsel ~~shall~~ consults established board guidelines for

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

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

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

(d) Content of Conditional Pleas. All conditional pleas ~~shall~~must show clearly by reference or otherwise the disciplinary offenses to which the plea is made. All conditional pleas in which the respondent agrees to the imposition of a suspension or disbarment ~~shall~~must include an acknowledgment that, unless waived or modified by the court on motion of the respondent, the court order accepting the conditional plea will contain a provision that prohibits the respondent from accepting new business from

the date of the order or opinion and ~~shall~~must provide that the suspension or disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients. A conditional plea may not permit a respondent to begin serving a suspension or disbarment until the Supreme Court of Florida issues an order or opinion approving the recommended discipline.

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

Matters involving disbarment on consent ~~shall be~~are processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these ~~Rules Regulating The Florida Bar~~rules, except that a respondent may enter into a disbarment on consent without admitting any of the facts or rule violations alleged by the bar. In ~~such~~that event, the disbarment on consent ~~shall~~must set forth a brief recitation of the allegations underlying the disbarment on consent. This option ~~shall~~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 employment related information; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition must also include copies of all pleadings in the matter leading to placement on the inactive list and all other matters reasonably required to demonstrate the petitioner's character and fitness ~~of the petitioner~~ to resume the practice of law.

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

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

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

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

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

(A) unlawful conduct;

(B) academic misconduct;

(C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;

(D) misconduct in employment;

(E) acts involving dishonesty, fraud, deceit, or misrepresentation;

(F) abuse of legal process;

(G) financial irresponsibility;

(H) neglect of professional obligations;

(I) violation of an order of a court;

(J) evidence of mental or emotional instability;

(K) evidence of drug or alcohol dependency;

(L) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(M) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(N) failure of a felony-suspended lawyer to submit proof that the affected lawyer's civil rights have been restored; ~~and~~

(*O*) holding out as if eligible to practice in any manner including, but not limited to, use of terms such as lawyer, attorney, esquire, or counselor at law in any communication including, but not limited to, letterhead, business cards, websites, and social media; and

(P) any other conduct that adversely reflects on the character or fitness of the applicant.

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

(A) age at the time of the conduct;

(B) recency of the conduct;

(C) reliability of the information concerning the conduct;

(D) seriousness of the conduct;

(E) factors underlying the conduct;

(F) cumulative effect of the conduct or information;

(G) evidence of rehabilitation;

(H) positive social contributions since the conduct;

(I) candor in the discipline and reinstatement processes; and

(J) materiality of any omissions or misrepresentations.

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

(A) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(B) unimpeachable character and moral standing in the community;

(C) good reputation for professional ability, where applicable;

(D) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;

(E) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;

(F) restitution of funds or property, where applicable; and

(G) positive action showing rehabilitation by such things as a person's community or civic service. Community or civic service is

donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions.

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

(4) *Educational Requirements.*

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

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

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

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

(g) Hearing; Notice; Evidence.

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

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

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

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

(5) *Evidence of Treatment or Counseling for Dependency or Other Medical Reasons.* If the petitioner has sought or received treatment or counseling for chemical or alcohol dependency or for other medical reasons that relate to the petitioner's fitness to practice law, the petitioner must waive confidentiality of ~~such~~that treatment or counseling ~~for purposes of evaluation of~~to evaluate the petitioner's fitness. The provisions of rule 3-7.1(d) ~~are applicable~~apply to information or records disclosed under this subdivision.

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

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

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

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

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

(1) *Availability.* Petitions for reinstatement under this rule are available to members placed on the inactive list for incapacity not related to misconduct and suspended members of the bar when the

disciplinary judgment conditions their reinstatement on a showing of compliance with specified conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) a statement as to whether any fraud charges ~~of fraud~~ were made or claimed against the petitioner during the period of

suspension, whether formal or informal, together with the dates and names and addresses of persons making these charges;

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

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

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

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

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

(m) Costs.

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

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

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

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

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

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

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

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

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

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

(n) Readmission; Applicability. A former member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted may be admitted again only ~~up~~on full compliance with the rules and regulations governing admission to the bar. No application for readmission following disbarment, disbarment on consent, or disciplinary resignation or revocation may be tendered until

~~such time as~~ all restitution and disciplinary costs ~~as may have been~~ ordered or assessed have been paid, together with any interest accrued.

(1) *Readmission After Disbarment.* Except as ~~might be~~ otherwise provided in these rules, no application for admission may be tendered within 5 years after the date of disbarment or ~~such~~any longer period of time ~~as the court might determine~~ in the disbarment order. An order of disbarment that states the disbarment is permanent precludes readmission to The Florida Bar.

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

Comment

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

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

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

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

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

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

(a~~b~~) 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 ~~up~~on the executive director of The Florida Bar.

(~~b~~c) Judgment. ~~Within 60 days after filing and service of the petition,~~ The Florida Bar ~~shall~~must file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for

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

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

(~~c~~e) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation ~~shall~~does not stay the progress of the disciplinary proceedings without the approval of the bar's board of governors.

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

(~~e~~g) Costs of Pending Disciplinary Cases. The judgment of the court granting disciplinary revocation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary cases against the

respondent. ~~Such costs shall be of the types and amounts~~These costs are as authorized elsewhere in these Rules Regulating The Florida Bar.

Comment

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

RULE 3-7.16 LIMITATION ON TIME TO OPEN INVESTIGATION

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

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

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

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

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

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. The limitation of time in which to bring or reopen a complaint within this rule is tolled where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint.

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

Comment

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

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT
4-1. CLIENT-LAWYER RELATIONSHIP
RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. A lawyer must not reveal information relating to a client's representation ~~of a client~~ except as

stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer must reveal confidential information to the extent the lawyer reasonably believes necessary to:

(1) ~~to~~ prevent a client from committing a crime; or

(2) ~~to~~ prevent ~~a~~ death or substantial bodily harm ~~to another~~.

(c) When Lawyer May Reveal Information. A lawyer may reveal confidential information to the extent the lawyer reasonably believes necessary to:

(1) ~~to~~ serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) ~~to~~ establish a claim or defense on the lawyer's behalf ~~of the lawyer~~ in a controversy between the lawyer and client;

(3) ~~to~~ establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved;

(4) ~~to~~ respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) ~~to~~ comply with the Rules Regulating The Florida Bar; ~~or~~

(6) ~~to~~ detect and resolve conflicts of interest between lawyers in different firms arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or

(7) respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law.

(d) Exhaustion of Appellate Remedies. When required by a tribunal to reveal confidential information, a lawyer may first exhaust all appellate remedies.

(e) Inadvertent Disclosure of Information. A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client's representation ~~of a client~~.

(f) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer must disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

Comment

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of confidential information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception,

clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based on experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose confidential information except as authorized or required by the Rules Regulating The Florida Bar or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In this situation the lawyer has not violated rule 4-1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer must reveal information in order to prevent these consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the lawyer to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take

suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in rule 4-1.6. Neither this rule nor rule 4-1.8(b) nor rule 4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule, the lawyer may make inquiry within the organization as indicated in rule 4-1.13(b).

Dispute concerning lawyer's conduct

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure this advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits this disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges complicity, so that the defense may be established by responding directly

to a third party who has made the assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. A charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Subdivision (c)(7) allows a lawyer to respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law. However, under subdivision (f), even when the lawyer is operating within the scope of the (c)(7) exception, disclosure must be no greater than the lawyer reasonably believes necessary to refute the specific allegations.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the

privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against a supersession.

Detection of Conflicts of Interest

Subdivision (c)(6) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, for example, when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See comment to rule 4-1.17. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. The disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, subdivision (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these rules.

Any information disclosed under this subdivision may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. This subdivision does not restrict the use of information acquired by means independent of any disclosure under this subdivision. This subdivision also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, for example, when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Acting Competently to Preserve Confidentiality

Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See rules 4-1.1, 4-5.1 and 4-5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forgo security measures that would otherwise be required by this rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, for example state and federal laws that govern data privacy or that impose notification requirements on the loss of, or unauthorized access to, electronic information, is beyond the scope of these rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see the comment to rule 4-5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, for example state and federal laws that govern data privacy, is beyond the scope of these rules.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

4-3. ADVOCATE
RULE 4-3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case ~~shall~~must:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as a right to a preliminary hearing; and

(c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Comment

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations such as making a reasonable effort to assure that the accused has been advised of the right to and the procedure for obtaining counsel and has been given a reasonable opportunity to obtain counsel so that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. ~~Florida has adopted the American Bar Association Standards of Criminal Justice Relating to Prosecution Function. This is the product of prolonged and careful deliberation by lawyers experienced in criminal prosecution and defense and should be consulted for further guidance.~~ See also rule 4-3.3(d) governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of these obligations or systematic abuse of prosecutorial discretion could constitute a violation of rule 4-8.4.

Subdivision (b) does not apply to an accused appearing pro se with the approval of the tribunal, nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (c) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

4-7. INFORMATION ABOUT LEGAL SERVICES
RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Clear and Conspicuous and Legibility. Any information required by these rules to appear in an advertisement must be ~~reasonably prominent~~clear and conspicuous and must be clearly legible if written, or intelligible if spoken. Information is clear and conspicuous if it is written, displayed, or presented in such a way that a reasonable person should notice it.

Comment

Name of ~~Lawyer or Lawyer Referral Service~~lawyer or lawyer referral service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic ~~Location~~location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office

for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is "available for consultation" or "available by appointment" or has a "satellite" office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to ~~Other Lawyers~~other lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: "Your case may be referred to another lawyer."

Language of ~~Advertisement~~advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

Clear and conspicuous

Information required by these rules to appear in an advertisement must be clear and conspicuous. If a disclaimer is required to modify specific written text, generally it will be clear and conspicuous if it receives equal or greater prominence, presentation, and placement and appears in close proximity relative to the text to be modified. For example, if a disclaimer is required to modify specific written text, generally it will be clear and conspicuous if it appears in the same or larger size text and immediately together with the text to be modified. If a disclaimer is required to modify spoken words, generally it will be clear and conspicuous if spoken at the same volume, tone, and speed as the words it modifies. If a disclaimer appears in text to modify spoken words, generally it will be clear and conspicuous if displayed in sufficiently large text that a reasonable person should notice it, at the same time the words it modifies are spoken, and for the duration of the time as the words it modifies. The overarching

consideration for required information or a disclaimer is that consumers notice it, read or hear it, and understand it.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) Deceptive and Inherently Misleading Advertisements. An advertisement is deceptive or inherently misleading if it:

(1) contains a material statement that is factually or legally inaccurate;

(2) omits information that is necessary to prevent the information supplied from being misleading; or

(3) implies the existence of a material nonexistent fact.

(b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited, to advertisements that contain:

(1) statements or information that a prospective client can reasonably interpret as a prediction or guaranty of success or specific results;

(2) references to past results, unless the information is objectively verifiable, subject to rule 4-7.14;

(3) comparisons of lawyers or statements, words, or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless the characterization is objectively verifiable;

(4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;

(5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently

~~displayed would resolve the erroneous impression: "Not~~, unless the advertisement contains a clear and conspicuous disclaimer that the person is not an employee or member of the law firm~~."~~;

(6) a dramatization of an actual or fictitious event that a reasonable viewer would not know is a dramatization from the context of the advertisement, unless the dramatization contains ~~the following prominently~~a clear and conspicuous ~~displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT"~~ disclaimer that it is a dramatization of either a real or fictitious event;

(7) an actor purporting to be engaged in a particular profession or occupation~~, unless~~ that a reasonable viewer would not know is a fictitious portrayal, unless the advertisement includes ~~the following prominently~~a clear and conspicuous ~~displayed notice: "ACTOR. NOT ACTUAL [. . . .]"~~disclaimer that the advertisement is using an actor to portray a person in the occupation or profession;

(8) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply ~~that~~ the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;

(9) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

(C) that ~~is not representative of~~does not represent what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(10) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified ~~pursuant to~~under chapter 6, Rules Regulating The Florida Bar; ~~or~~

(11) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed after the person's name in reference to a current, former, or retired judicial, executive, or legislative branch official currently engaged in the practice of law; or

(12) a statement or implication that another lawyer or law firm is part of, is associated with, or affiliated with the advertising law firm when that is not the case, including contact or other information presented in a way that misleads a person searching for a particular lawyer or law firm, or for information regarding a particular lawyer or law firm, to unknowingly contact a different lawyer or law firm.

Comment

Material omissions

An example of a material omission is stating "over 20 years' experience" when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states "over 20 years' experience" when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied existence of nonexistent fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a

statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a

specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past results

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client’s actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, “I have successfully represented clients,” or “I have won numerous appellate cases,” may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words “successful” or “won” in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word “successful” to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words “successful” or “won” to mean an acquittal.

Rule 4-1.6(a), Rules Regulating The Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client’s informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client’s informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client’s informed consent.

Comparisons

The prohibition against comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of skills, experience, reputation or record

The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy."

For example, the statement, “I am dedicated to excellence in my representation of my clients,” is permissible as a goal. Similarly, the statement, “My goal is to provide high quality legal services,” is permissible.

Areas of practice

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event where it is not clear from the context of the advertisement that the portrayal is a re-creation or staging of an event must contain a ~~prominently~~ clear and conspicuous ~~displayed~~ disclaimer~~, “DRAMATIZATION. NOT AN ACTUAL EVENT.”~~ For example, a re-creation of a car accident must contain ~~the~~an appropriate clear and conspicuous disclaimer if the context of the advertisement makes the re-creation appear to be a matter handled by that law firm. A re-enactment of lawyers visiting the re-construction of an accident scene must contain ~~the~~an appropriate clear and conspicuous disclaimer if it is not clear from the advertisement that it is a re-enactment.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under rule 4-7.15.

Implying lawyer will violate rules of conduct or law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in “combative

and vicious tactics" that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Florida bar approval of ad or lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, "This advertisement was approved by The Florida Bar." A lawyer referral service also may not state that it is a "Florida Bar approved lawyer referral service," unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating The Florida Bar. A qualifying provider also may not state that it is a "Florida Bar approved qualifying provider" or that its advertising is approved by The Florida Bar.

Judicial, executive, and legislative titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed after the person's name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Judge Doe (Retired), Former Justice Doe, Retired Judge Smith, Justice Smith (retired), Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements

and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is after the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed after the person's name. For example, the statement "John Jones was governor of the State of Florida from [. . . years of service . . .]" would be permissible.

Also, the rule governs lawyer advertising. It does not apply to pleadings filed in a court. A practicing lawyer who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge's previous title of "Judge" in a pleading could be sanctioned.

Implication of association or affiliation with another lawyer or law firm

This rule prohibits any statement or implication that a lawyer or law firm is affiliated or associated with the advertising lawyer or law firm when that is not the case. Lawyers may not state or imply another lawyer is part of the advertising firm if the statement or implication is untrue. For example, when a lawyer leaves a law firm, the firm must remove the lawyer's name from the firm's letterhead, website, advertisements, and other communications about the law firm. An example of impermissible advertising would be including the name of a lawyer or law firm that is not part of the advertising law firm in an Internet advertisement or sponsored

link that is displayed when the non-affiliated lawyer or law firm's name is used as a search term when the advertisement does not clearly indicate that the non-affiliated lawyer or law firm is not part of the advertising law firm. Another example of impermissible conduct is use of another lawyer or law firm name as an Internet search term that triggers the display of an advertisement that does not clearly indicate that the advertisement is for a lawyer or law firm that is not the lawyer or law firm used as the search term. The triggered advertisement would not be misleading if the first text displayed is the name of the advertising lawyer or law firm and, if the displayed law firm name is a trade name that does not contain the name of a current or deceased partner, the name of the lawyer responsible for the advertisement is also displayed as the first text.

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in potentially misleading advertising.

(a) Potentially Misleading Advertisements. Potentially misleading advertisements include, but are not limited to:

(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base the membership or recognition on a lawyer's ability or skill, unless the entity conferring the membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based on objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified or other variations of that term unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating ~~the~~The Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules~~. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include~~ and the advertisement includes the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization;

(5) a statement that the lawyer is a specialist or an expert in an area of practice, or other variations of those terms, unless the lawyer is certified under the Florida Certification Plan or an American Bar Association or Florida Bar accredited certification plan or the lawyer can objectively verify the claim based on the lawyer's education, training, experience, or substantial involvement in the area of practice in which specialization or expertise is claimed;

(6) a statement that a law firm specializes or has expertise in an area of practice, or other variations of those terms, unless the law firm can objectively verify the claim as to at least 1 of the lawyers who are members of or employed by the law firm as set forth in subdivision (a)(5) above, but if the law firm cannot objectively verify the claim for every lawyer employed by the firm, the advertisement must contain a ~~reasonably prominent~~clear and conspicuous disclaimer that not all

lawyers in the firm specialize or have expertise in the area of practice in which the firm claims specialization or expertise; or

(7) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is "certified" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law~~,~~ may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms "specialization," "expertise," or other variations of those terms, conveys some meaningful information to the public, and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer

can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer's "of counsel" relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the "of counsel" lawyer's board certification or qualifications only if the "of counsel" practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the "of counsel" qualifications in making the claim.

A disclaimer that not all lawyers in the firm specialize or have expertise when a firm claims specialization or expertise is clear and conspicuous when it is written, displayed, or presented in the same or larger text if appearing immediately together with the text making the claim of firm specialization or expertise; spoken in the same volume, tone, and speed as the claim of firm specialization or expertise and at the same time as or immediately after the claim of firm specialization or expertise if spoken aloud; or any other way that a reasonable consumer should notice it, read or hear it, and understand it.

Fee and cost information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are

permissible: “No Fee if No Recovery, but Client is Responsible for Costs,” “No Fee if No Recovery, Excludes Costs,” “No Recovery, No Fee, but Client is Responsible for Costs” and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements “No Fees or Costs If No Recovery” and “No Recovery - No Fees or Costs” are permissible.

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, social media contact information including social media icons or logos, and a designation such as “attorney” or “law firm”;

(2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;

(3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;

(4) military service, including branch and dates of service;

(5) foreign language ability;

(6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of ~~subdivision (a)(4) of rule 4-7.14~~this subchpater regarding use of terms such as certified, specialist, and expert;

(7) prepaid or group legal service plans in which the lawyer participates;

(8) acceptance of credit cards;

(9) fee for initial consultation and fee schedule, subject to the requirements of ~~subdivisions (a)(5) of rule 4-7.14~~this subchapter regarding cost disclosures and honoring advertised fees;

(10) common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;

(11) punctuation marks and common typographical marks;

(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. The Florida Bar’s lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating

~~the~~The Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

Comment

The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules; and

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) These communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be ~~reasonably prominently~~clearly and conspicuously marked "advertisement." ~~in ink that contrasts with both the background it is printed on and other text appearing on the same page.~~ If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be ~~reasonably prominently~~clearly and conspicuously marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via ~~electronic mail~~email, the subject line of the email must begin with the word "Advertisement~~.~~," and any attachment to the email must also be clearly and conspicuously marked "advertisement." The term "advertisement" is sufficiently clear and conspicuous if it is written, displayed, or presented in larger and contrasting text relative to other text appearing on the page or any other way that a reasonable consumer should notice it.

(C) Every written communication must ~~be accompanied by~~include a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must ~~be accompanied by~~include a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation ~~is mailed with~~accompanies the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

~~(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."~~

(~~F~~E) Written communications must not ~~be made to~~ resemble legal pleadings or other legal documents.

(~~G~~F) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(~~H~~G) Any written communication prompted by a specific occurrence and directed to a recipient that the lawyer knows or reasonably should know directly ~~involving or affecting~~involves or affects the intended recipient ~~of the communication~~ or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(~~I~~H) A written communication ~~seeking employment by a specific prospective client~~ prompted by a specific occurrence and directed to a recipient that the lawyer knows or reasonably should know directly involves or affects the intended recipient or a family member in a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the ~~client's~~recipient's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

Comment

Permissible contact

A lawyer may initiate the routine mutual exchange of contact information with prospective clients who are attending the same business or professional conference or meeting or business-related social gathering

if the lawyer initiates no further discussion of a specific legal matter. Similarly, a lawyer may initiate the exchange of contact information and profiles via a specific social media platform that is established for the purpose of businesses and professionals exchanging this type of information if the lawyer initiates no discussion of specific legal matters. If a prospective client then initiates discussion of a specific legal matter, the lawyer should decline to discuss the matter at the initial contact and defer further discussion to a more appropriate location when the discussion would endanger a prospective client's confidentiality. Lawyers should not interpret the above to allow a lawyer who knows a person has a specific legal problem to go to a specific conference or meeting where that prospective client will be in attendance in order to initiate the exchange of contact information. An accident scene, a hospital room of an injured person, or a doctor's office are not business or professional conferences or meetings within the meaning of the discussion above.

Prior professional relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing where the lawyer obtained information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest, and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Disclosing the Nature of the Prospective Client's Legal Problem

This requirement does not apply where a written communication is prompted by a specific occurrence with widespread impact, such as a hurricane or a flood, where although the communication has been prompted by a specific occurrence, the lawyer neither knows nor has reason to know that the intended recipient was in fact affected by the specific occurrence.

Group or prepaid legal services plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with these representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating ~~the~~The Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d) When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; ~~and~~

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public; and

(12) has lawyers from at least 4 different law firms participating in the panel or group of lawyers to whom clients are referred.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s)

and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) *Trust Account Required; Location of Trust Account; Commingling Prohibited*. A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons

that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except:

(A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and

(B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

(2) *Compliance with Client Directives*. Trust funds may be separately held and maintained other than in a bank, credit union, or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) *Safe Deposit Boxes*. If a lawyer uses a safe deposit box to store trust funds or property, the lawyer must advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand is conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property on which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. On receiving funds or other property in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, on request by the client or third person, must promptly render a full accounting regarding the property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property must be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm must be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions*. As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Foundation” means The Florida Bar Foundation, Inc. which serves as the designated IOTA fund administrator and monitors and receives IOTA funds from eligible institutions and distributes IOTA funds consistent with the obligations and directives in this rule.

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) “Eligible institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account<u>, business or consumer deposit account or sub account, business or consumer deposit account or sub account that does not have a maturity date (non-maturing deposit),</u> or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as

a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least $250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F) A “qualified grantee organization” is a charitable or other nonprofit organization that facilitates or directly provides qualified legal services by qualified legal services providers and that has experience in successfully doing so.

(G) “Qualified legal services” are free legal services provided directly to low-income clients for their civil legal needs in Florida, and includes post-conviction representation, programs that assist low-income clients in navigating legal processes, and the publication of legal forms or other legal resources for use by pro se litigants.

(H) A “qualified legal services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide qualified legal services.

(I) “Direct expenses required to administer the IOTA funds” means those actual costs directly incurred by the foundation in performing the obligations imposed by this rule. Direct expenses required to administer the IOTA funds must not exceed 15% of collected IOTA funds in any fiscal year without the court’s prior approval. These costs include preparation of the foundation’s annual audit on IOTA funds, compensation of staff who exclusively perform the required collection, distribution, and reporting obligations imposed by this rule and overhead expenses of the foundation directly related to fulfilling its obligations under this rule. Direct expenses required to administer the IOTA funds also include:

(i) actual costs and expenses incurred by the foundation to increase the amount of IOTA funds available for distribution;

(ii) funding of reserves deemed by the foundation to be reasonably prudent to promote stability in distribution of IOTA funds to qualified grantee organizations;

(iii) direct costs related to providing training and technology to qualified grantee organizations, as specified below; and

(iv) direct costs to administer the Loan Repayment Assistance Program and to distribute funds in connection with the program (but not the program funds themselves).

(J) "The court" means the Florida Supreme Court.

(2) *Required Participation*. All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida ~~bar~~Bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds*. The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider ~~such~~ factors as the:

(A) amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) period of time the funds are expected to be held;

(C) likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) lawyer or law firm's cost of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements ~~and/~~or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation*. Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA*. Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions must maintain IOTA accounts ~~which~~that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance ~~or other account eligibility~~ qualifications~~, if any~~.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by

the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account. The minimum interest rate paid net of all fees and service charges ("yield") must be no less than 25 basis points (.25%). When the Wall Street Journal Prime Rate ("indexed rate") is between 325 and 499 basis points (3.25% and 4.99%), the yield must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.

(C) Remittance and Reporting Instructions. Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the foundation;

(ii) transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts*. The foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for

client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure*. The foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined in this subchapter may not receive benefit from any interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When a lawyer's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, the funds or property must be designated as unidentifiable or held for missing owners. The lawyer must make a diligent search and inquiry to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds must be properly identified as trust property in the lawyer's possession. If a missing beneficial owner is located, the trust funds or property must be paid over or delivered to the beneficial owner if the owner is then entitled to receive the funds or property. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners must be disposed of as provided in applicable Florida law after diligent search and inquiry fail to identify the beneficial owner or owner's address.

(j) Disbursement against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to

carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on these deposits without disclosure to and permission of affected clients. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. The lawyer may disburse uncollected funds from the trust account in reliance on the deposit when the deposit is made by a:

(1) certified check or cashier's check;

(2) check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) bank check, official check, treasurer's check, money order, or other instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(4) check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(5) check issued by the United States, the state of Florida, or any agency or political subdivision of the state of Florida;

(6) check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, on obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, the lawyer will not be guilty of professional misconduct if the lawyer accepting any check that is later dishonored personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients.

(k) Overdraft Protection Prohibited. A lawyer must not authorize overdraft protection for any account that contains trust funds.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer

reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds must be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect these third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. *See Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc*., 982 So. 2d 628 (Fla. 2008). Under certain circumstances lawyers may have a legal duty to protect funds in the lawyer's trust account that have been assigned to doctors, hospitals, or other health care providers directly or designated as Medpay by an insurer. *See The Florida Bar v. Silver*, 788 So. 2d 958 (Fla. 2001); *The Florida Bar v. Krasnove*, 697 So. 2d 1208 (Fla. 1997); *The Florida Bar v. Neely*, 587 So. 2d 465 (Fla. 1991); Florida Ethics Opinion 02-4.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule. However, where a lawyer is an escrow agent and represents a party to a transaction involving the escrowed funds, the Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties having an interest in escrowed funds whether the funds are in a lawyer's trust account or a separate escrow account. *The*

Florida Bar v. Golden, 566 So. 2d 1286 (Fla. 1990); *See also The Florida Bar v. Hines*, 39 So. 3d 1196 (Fla. 2010); *The Florida Bar v. Marrero*, 157 So. 3d 1020 (Fla. 2015).

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand must be a conversion. This does not preclude the retention of money or other property on which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer on receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

Foundation Provision of Training and Technology; Grantees' Funds from Non-IOTA Sources

While the foundation may use IOTA funds to provide training and technology to qualified grantee organizations, and qualified grantee organizations may use disbursed IOTA funds to pay the foundation for that training and technology, the foundation may not condition a grant on payment for these, or any, services provided by the foundation to the qualified grantee organization. For instance, the foundation may arrange

for bulk purchasing of technology which can then be provided to a qualified grantee organization at a lower cost than would be otherwise available to the qualified grantee organization, but the foundation may not, as a grant condition, require the grantee to pay the foundation for such services. A qualified grantee organization should, but is not required to, receive funds from sources other than IOTA funds to support its overall mission.

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS
6-3. FLORIDA CERTIFICATION PLAN
RULE 6-3.6 RECERTIFICATION

(a) Duration of Certification. No certificate ~~shall~~ lasts for a period longer than 5 years.

(b) Minimum Standards for Proficiency. Each area of certification established under this chapter ~~shall~~ contains requirements and safeguards for the continued proficiency of any certificate holder. The following minimum standards ~~shall~~ apply:

(1) ~~A~~a satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted~~.~~;

(2) ~~A~~a satisfactory showing of ~~such~~ continuing legal education in the area for which certification is granted but in no event less than 50 credit hours during the 5-year period of certification~~.~~;

(3) ~~Satisfactory~~satisfactory peer review and professional ethics record in accordance with rule 6-3.5(c)(6)~~.~~;

(4) ~~Any applicant for recertification who is not, at the time of application for recertification, a member~~membership in good standing of The Florida Bar ~~or~~and any other bar or jurisdiction in which the applicant is admitted~~, as a result of discipline, disbarment, suspension, or resignation in lieu thereof, shall be denied recertification. The fact of~~; a pending disciplinary complaint or malpractice action against an applicant for recertification ~~shall~~may not be the sole basis to deny recertification~~.~~; and

(5) ~~The~~ payment of any fees prescribed by the plan.

(c) Failure to Meet Standards for Recertification; Lapse of Certificate. Any applicant for recertification who has either failed to meet the standards for recertification or has allowed the certificate to lapse must meet all the requirements for initial certification as set out in the area's standards.

6-10. CONTINUING LEGAL EDUCATION REQUIREMENT RULE RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS

(a) Applicability. Every member~~, except those exempt under subdivision (c) of this rule,~~ must comply and report compliance with the continuing legal education requirement except those exempt under subdivision (c) of this rule. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of this rule. Members described in subdivisions (c)(4) through (c)(6) of this rule are automatically exempt from compliance and reporting of continuing legal education.

(b) Minimum Hourly Continuing Legal Education Requirements. ~~Each~~Every member must complete a minimum of 33 credit hours of approved continuing legal education activity every 3 years. At least 5 of the 33 credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental ~~illness awareness~~health and wellness programs, with at least 1 of the 5 hours in an approved professionalism program~~,~~ and at least 3 of the 33 credit hours ~~must be~~ in approved technology programs. If a member completes more than 33 credit hours during any reporting cycle, the excess credits cannot be carried over to the next reporting cycle.

(c) Exemptions. Eligibility for an exemption, ~~in accordance with~~under policies adopted under this rule, is available for:

(1) active military service;

(2) undue hardship;

(3) nonresident members not delivering legal services or advice on matters or issues governed by Florida law;

(4) members of the full-time federal judiciary who are prohibited from engaging in the private practice of law;

(5) justices of the Supreme Court of Florida and judges of the district courts of appeal, circuit courts, and county courts, and other judicial officers and employees as designated by the Supreme Court of Florida; and

(6) inactive members of The Florida Bar.

(d) Course Approval. Course approval is set forth in policies adopted ~~pursuant to~~under this rule. ~~Special policies will be adopted for courses~~Courses sponsored by governmental agencies for employee lawyers ~~that~~are exempt ~~these courses~~ from any course approval fee and may exempt these courses from other requirements ~~as determined~~under policies adopted by the board of legal specialization and education.

(e) Accreditation of Hours. Accreditation standards are set forth in the policies adopted under this rule. Any course presented, sponsored, or approved for credit by an organized integrated or voluntary state bar is deemed an approved course for purposes of this rule if the course meets the criteria for accreditation established by policies adopted under this rule.

(f) Full-time Government Employees. Credit hours will be given to full-time government employees for courses presented by governmental agencies. Application for credit approval may be submitted by the full-time government lawyer before or after attendance~~,~~ without charge.

(g) Skills Training Preadmission. The board of legal specialization and education may approve for CLER credit a basic skills or entry level training program developed and presented by a governmental entity. Credit earned through attendance at an approved course developed and presented by a governmental entity is applicable under subdivision (b) of this rule if taken within 12 months prior to admission to The Florida Bar.

6-12. BASIC SKILLS COURSE REQUIREMENT RULE

RULE 6-12.4 DEFERMENT AND EXEMPTION

(a) Deferment of Practicing with Professionalism Requirement.

(1) *Deferment Eligibility*. A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(1)~~,~~ if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida; or

(D) the member elects inactive membership status in The Florida Bar~~; or~~

~~(E) the member is a full-time government employee who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination, as long as the member continuously remains in government practice~~.

(2) *Deferment Expiration*. A deferment of the requirements of rule 6-12.3(a)(1) as provided under this rule ~~shall~~ expires ~~at the time~~when the member is no longer eligible for deferment. ~~Upon~~On expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) attend the Practicing with Professionalism program within 12 months of deferment expiration.

(b) Deferment of Basic Level YLD Courses.

(1) *Deferment Eligibility*. A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(2) if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member is a full-time governmental employee; or

(E) the member elects inactive membership status in The Florida Bar.

(2) *Deferment Expiration*. A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule ~~shall~~ expire~~s~~ ~~at the time~~when the member is no longer eligible for deferment. ~~Upon~~On expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration.

(c) Exemption.

(1) *Governmental Practice*. ~~An exemption from rule 6-12.3(a)(1) shall be granted if a member who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination has already or thereafter been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years. An~~The bar will grant an exemption from the 3 elective, basic, substantive continuing legal education programs sponsored by the YLD required by rule 6-12.3(a)(2) ~~shall be granted~~ if a member has been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years.

(2) *Foreign Practice*. ~~An~~The bar will grant an exemption from the 3 elective, basic, substantive continuing legal education programs sponsored by the YLD required by rule 6-12.3(a)(2) ~~shall be granted~~ if a member has been continuously engaged in the practice of law (non-governmental) in a foreign jurisdiction for a period of 5 years, can demonstrate completion of ~~30~~33 hours of approved continuing legal

education within the immediate 3-year period, and can attest that the continuing legal education completed has reasonably prepared the member for the anticipated type of practice in Florida.

6-22. STANDARDS FOR BOARD CERTIFICATION IN ANTITRUST AND TRADE REGULATION LAW

RULE 6-22.1 GENERALLY

~~A lawyer who is a member in good standing of The Florida Bar and meet the standards prescribed below may be~~This certification area is closed to new applicants. Each lawyer who has been certified under this subchapter has been issued a certificate identifying the lawyer as "Board Certified in Antitrust and Trade Regulation Law." The purpose of the standards is to identify those lawyers who practice in the area of antitrust law, unfair methods of competition, and deceptive, unfair, or unconscionable trade practices and who have the special knowledge, skills, experience, and judgment, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in antitrust and trade regulation law. ~~Applicants are required to establish~~Lawyers who are certified in this area have established that they have a special ability as a consequence of broad and varied experience in antitrust and trade regulation law, including the following:

(a) a ready grasp of the substantive and procedural law bearing on this area of practice;

(b) an awareness of and experience with the range of appropriate courses of action and remedies that can be invoked in aid of clients involved in such matters;

(c) a sound judgment in proposing solutions and approaches, so that proportion both as to expense and delay is maintained between the nature of the problem to be solved and the cost and elaborateness of the proposed response or solution; and

(d) an attitude of professionalism in every aspect of the applicant's approach to clients, courts, or administrative bodies, and fellow practitioners.

RULE 6-22.3 MINIMUM STANDARDS

This certification area is closed to new applicants.

(a) Substantial Involvement and Competence. The applicant must demonstrate continuous and substantial involvement and competence in substantive antitrust principles and deceptive, unfair, or unconscionable acts or practices in multiple areas of commerce to become certified as an antitrust and trade regulation lawyer. Substantial involvement and competence must be demonstrated by the following.

(1) *Minimum Period of Practice.* The applicant must have practiced law for 5 years immediately preceding the filing of the application for certification, during which the applicant was involved in at least 8 matters that substantially involved antitrust or trade regulation law.

(2) *Minimum Number of Matters.* The applicant must have handled a minimum of 8 contested matters that involved representation of a client beyond counseling during the 10 years immediately preceding application. Each of these matters must have substantially involved legal and factual issues, and at least 50 percent of the matters must have involved federal antitrust law or state or federal trade regulation law. In each of these 8 matters, the applicant must have had senior level responsibility for a majority of the counseling, advice, and supervision of or involvement in the presentation of evidence, argument to the tribunal, and representation of the client. The antitrust and trade regulation certification committee will consider involvement in protracted matters as separate matters for satisfaction of the 8 contested matters requirement. Every documented 300 hours of work on antitrust or trade regulation issues in a case is the equivalent of an additional matter for purposes of meeting the threshold of a minimum of 8 contested matters during the 10 years immediately preceding application. The antitrust and trade regulation certification committee will consider the following for satisfaction in whole or in part of the requirement of 8 matters in which the applicant had senior level responsibility on good cause shown:

(A) verified substantial involvement in matters involving antitrust law or trade regulation law at a government agency; and

(B) in lieu of 2 contested matters, an applicant may submit a certificate of satisfactory completion of a nationally recognized trial advocacy course of at least 1 week's duration, in which the applicant's performance was, in whole or in part, recorded visually and critiqued by experienced trial lawyers.

(3) Substantial Involvement. The applicant must have substantial involvement in matters involving federal antitrust or state or federal trade regulation law sufficient to demonstrate special competence as an antitrust and trade regulation lawyer. Substantial involvement may be evidenced by active participation in client interviewing; counseling; evaluating; investigating; preparing pleadings, motions, and memoranda; participating in discovery; taking testimony; briefing issues; presenting evidence; negotiating settlement; drafting and preparing settlement agreements; or arguing, trying, or appealing cases involving antitrust law or trade regulation law.

(b) Peer Review. The applicant must submit names and addresses of at least 5 lawyers or judges who are neither relatives nor present or former associates or partners to complete peer review forms. Such lawyers should be substantially involved in antitrust and trade regulation law and familiar with the applicant's practice.

(c) Education. The applicant must complete 50 hours of approved continuing legal education in the field of antitrust and trade regulation law within the 3 years preceding the application date. Accreditation of educational hours is subject to policies established by the antitrust and trade regulation certification committee or the board of legal specialization and education.

(d) Examination Exemption. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in antitrust and trade regulation law to justify representation of special competence to the legal profession and to the public. The award of an LL.M. degree from an approved law school in the area of antitrust or trade regulation law within 8 years of application may substitute as the written examination required by this subdivision. The applicant is exempt from any litigation portion of the examination requirement if the applicant is certified by The Florida Bar in business

~~litigation or civil trial law and meets the minimum standards of subdivisions (a)-(c) of this rule.~~

CHAPTER 11. RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM
11-1. GENERALLY
RULE 11-1.1 PURPOSE

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for ~~such~~legal services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rules are adopted.

RULE 11-1.2 ACTIVITIES

(a) Definition. A law school practice program is a credit-bearing clinical program coordinated by a law school in which students directly provide representation to clients in litigation under the supervision of a lawyer.

(b) Appearance in Court or Administrative Proceedings. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf the student is appearing has ~~indicated in writing~~ consented in writing to that appearance and the supervising lawyer has ~~also indicated in writing approval of~~approved that appearance in writing. In those cases in which the indigent person has a right to appointed counsel, the supervising ~~attorney shall~~lawyer must be personally present at all critical stages of the proceeding. In all cases, the supervising ~~attorney shall~~lawyer must be personally present when required by the court or administrative tribunal, ~~who~~which ~~shall~~ determines the extent of the eligible law student's participation in the proceeding.

(c) Appearance for the State in Criminal Proceedings. An eligible law student may ~~also~~ appear in any criminal matter on behalf of the state with the written approval of the state attorney or the attorney general and of the supervising lawyer. ~~In such cases the~~The supervising ~~attorney shall~~lawyer must be personally present when required by the court,

~~who~~which ~~shall~~ determine~~s~~ the extent of the law student's participation in the proceeding.

(d) Appearance on Behalf of Governmental Officers or Entities. An eligible law student may ~~also~~ appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies~~,~~ or on behalf of a municipality or county~~,~~ ~~provided~~ that ~~the municipality or county~~ has a full-time legal staff~~,~~ with the written approval of the ~~attorney~~lawyer representing the state, state officer, state agency, municipality, or county. The ~~attorney~~lawyer representing the state, state officer, state agency, municipality, or county ~~shall~~must supervise the law student and ~~shall~~ be personally present when required by the court or administrative tribunal, which ~~shall~~ determine~~s~~ the extent of the law student's participation in the proceeding.

(e) Filing of Consent and Approval. In each case~~,~~ the written consent and approval referred to above ~~shall~~must be filed in the record of the case and ~~shall be~~ brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. If the client is the state attorney, state officer, or governmental entity, ~~it shall be sufficient to file~~filing the written consent and approval with the clerk and each presiding judge once for the term of the student's participation is sufficient.

~~**(f) Fixing of Standards of Indigence.** The board of governors shall fix the standards by which indigence is determined under this chapter upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.~~

RULE 11-1.3 REQUIREMENTS AND LIMITATIONS

In order to make an appearance ~~pursuant to~~under this chapter, the law student must:

(a) ~~have~~ register~~ed~~ with the Florida Board of Bar Examiners as a certified legal intern registrant; ~~have paid~~pay ~~the~~a $75 registration fee ~~for such registration~~ if the registration is ~~completed~~filed within the first 250 days of the registrant's law school education or $150 if the registration is filed after the 250-day deadline (any fee paid under this subdivision will be deducted from the applicable application fee if the certified legal intern registrant later applies for admission to The Florida Bar); and ~~have~~

~~received~~receives a letter of clearance as to character and fitness from the Florida Board of Bar Examiners; ~~any fee paid under this subdivision shall be deducted from the applicable application fee should the certified legal intern registrant subsequently decide to apply for admission to The Florida Bar~~;

(b) be ~~duly~~ enrolled in the United States in, and appear~~ing~~ as part of a law school practice program of, a law school approved by the American Bar Association;

(c) have completed legal studies amounting to at least 4 semesters or 6 quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent ~~if the school is on some other basis~~;

(d) be certified by the dean of the student's law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern in a law school practice program;

(e) be introduced to the court in which the student is appearing by ~~an attorney~~a lawyer admitted to practice in that court;

(f) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services~~, but this shall~~; although this does not prevent a state attorney, public defender, legal aid organization, ~~or~~ state officer, or governmental entity from paying compensation to the eligible law student ~~(~~nor ~~shall~~does it prevent ~~any of the foregoing~~them from ~~making such charge~~charging for ~~its~~ services as ~~it~~they may ~~otherwise~~ require~~)~~; and

(g) certify in writing that the law student has read and ~~is familiar with~~and will abide by the Rules of Professional Conduct as adopted by ~~this court and will abide by the provisions thereof~~The Supreme Court of Florida.

RULE 11-1.4 CERTIFICATION OF STUDENT

The certification of a student by the law school dean or the dean's designee:

(a) ~~Shall~~must be filed with the clerk of ~~this court~~the Supreme Court of Florida, ~~and~~where~~, unless it is sooner withdrawn,~~ it ~~shall~~ remains in effect ~~until the expiration of~~for 18 months after it is filed unless withdrawn sooner~~.~~;

(b) ~~May~~may be withdrawn by the dean, or the dean's designee, at any time by mailing a notice, that does not need to include the cause for withdrawal, ~~to that effect~~ to the clerk of ~~this court~~the Supreme Court of Florida~~. It is not necessary that the notice state the cause for withdrawal.~~;

(c) ~~May~~may be terminated by ~~this court~~the Supreme Court of Florida at any time without notice or hearing and without any showing of cause. ~~Notice of the termination may be filed with the clerk of the court.~~

RULE 11-1.5 APPROVAL OF LEGAL AID ORGANIZATION

Legal aid organizations that provide a majority of their legal services to the indigent and use law student interns ~~pursuant to~~under this chapter must be approved by the ~~supreme court~~Supreme Court of Florida. A legal aid organization seeking approval ~~shall~~must file a petition with the clerk of the court certifying that it is a nonprofit organization and ~~reciting~~stating with specificity the:

(a) ~~the~~ structure of the organization and whether it accepts funds from its clients;

(b) ~~the~~ major sources of funds used by the organization;

(c) ~~the~~ criteria used to determine potential clients' eligibility for legal services performed by the organization;

(d) ~~the~~ types of legal and nonlegal services performed by the organization; and

(e) ~~the~~ names of all Florida Bar members ~~of The Florida Bar~~ who are employed by the organization or who regularly perform legal work for the organization.

Legal aid organizations ~~approved on the effective date of~~under this chapter ~~need not reapply for approval, but all such organizations~~ are under a continuing duty to notify the court promptly of any significant modification to their structure or sources of funds.

RULE 11-1.6 OTHER ACTIVITIES

(a) Preparation of Documents; Assistance of Indigents. ~~In addition,~~ ~~an~~An eligible law student may engage in other activities~~,~~ under the general supervision of a member of ~~the bar of this court~~The Florida Bar, but outside the personal presence of that lawyer, including preparation of:

(1) ~~preparation of~~ pleadings and other documents to be filed in any matter in which the student is eligible to appear, ~~but such pleadings or documents must be~~ signed by the supervising lawyer;

(2) ~~preparation of~~ briefs, abstracts, and other documents to be filed in appellate courts of this state, ~~but such documents must be~~ signed by the supervising lawyer;

(3) ~~except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court, assistance~~applications and supporting documents for post-conviction relief to indigent inmates ~~or~~of correctional institutions or other persons who request ~~such~~ assistance ~~in preparing applications for and supporting documents for postconviction relief~~, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court. If there is ~~an attorney~~a lawyer of record in the matter, all ~~such~~ assistance must be supervised by ~~the attorney of record,~~ and all documents submitted to the court must be signed by, that lawyer ~~and all documents submitted to the court on behalf of such a client must be signed by the attorney of record~~.

(b) Identification of Student in Documents and Pleadings. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If the student participated in drafting only a portion of it, that fact may be mentioned.

(c) Participation in Oral Argument. An eligible law student may participate in oral argument in appellate courts but only in the presence of the supervising lawyer.

RULE 11-1.7 SUPERVISION

~~The member of the bar under whose supervision an eligible law student does any of the things permitted by~~A supervising lawyer under this chapter must:

(a) be a ~~lawyer~~a member of The Florida Bar in good standing and eligible to practice law in Florida whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled ~~and who is a member of The Florida Bar in good standing and eligible to practice law in Florida~~;

(b) be a lawyer employed by a state attorney, public defender, an approved legal aid organization, a state officer, or a governmental entity enumerated in rule 11-1.2~~(d)~~;

(c) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and

(d) assist the student in the student's preparation to the extent the supervising lawyer considers it necessary.

~~RULE 11-1.8 MISCELLANEOUS~~

~~Nothing contained in this chapter shall affect the right of any person who is not admitted to the practice of law to do anything that the person might lawfully do prior to the adoption of this chapter.~~

RULE 11-1.~~9~~8 CONTINUATION OF PRACTICE PROGRAM AFTER COMPLETION OF LAW SCHOOL PROGRAM OR GRADUATION

(a) Certification. A law student at an American Bar Association-approved Florida law school who has filed an application for admission to The Florida Bar, ~~has~~ received an initial clearance letter as to character and fitness from the Florida Board of Bar Examiners, ~~has~~ completed a law school practice program awarding a minimum of 3 semester credit hours or the equivalent or requiring at least 200 hours of actual participation in the program, and ~~has~~ had certification withdrawn by the law school dean by reason of successful completion of the program or ~~has~~ graduated from law

school following successful completion of the program may make appearances for any of the same supervisory authorities under the same circumstances and restrictions that were applicable to students in law school programs ~~pursuant to~~under this chapter if the supervising ~~attorney~~lawyer:

(1) files a certification in the same manner and subject to the same limitations as that required to be filed by the law school dean; ~~and files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of certification. The maximum term of certification for graduates shall be 12 months from graduation; and.~~

(2) further certifies that the ~~attorney will~~lawyer assumes the duties and responsibilities of ~~the~~a supervising ~~attorney~~lawyer ~~as provided by other provisions of~~under this chapter~~.~~; and

(3) files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of certification. ~~The maximum term of certification for graduates shall be 12 months from graduation; and.~~

(b) Graduates of Non-Florida Law Schools. A graduate of an American Bar Association-approved non-Florida law school may qualify for continuation in the practice program if the graduate has ~~made application~~filed an application for admission to The Florida Bar, ~~and~~ received a letter of initial clearance as to character and fitness from the Florida Board of Bar Examiners, and has successfully completed a clinical program in law school that met the definition of a law school practice program under rule 11-1.2~~(a) and~~ that awarded a minimum of 3 semester hours or the equivalent or required at least 200 hours of actual participation in the program.

(c) Term of Certification. The maximum term of certification for graduates is 12 months from the date of graduation.

(~~c~~d) Termination of Certification. ~~Failure of a post-graduate certified legal intern to do any of the following shall result in the automatic termination of certification:~~

~~(1) failure to take the next available Florida bar examination;~~

~~(2) failure to take the second available Florida bar examination, if unsuccessful on the first administration;~~

~~(3) failure to pass every portion of the Florida bar examination by at least the second administration, if unsuccessful on the first administration; or~~

~~(4) denial of admission to The Florida Bar.~~Failure to take the next available Florida bar examination, failure of any portion of the Florida bar examination on the second administration if a second administration is required, or denial of admission to The Florida Bar terminates certification under this rule.

(e) Withdrawal of Certification. Certification may be withdrawn in the same manner as the law school dean's withdrawal of certification.

RULE 11-1.~~10~~9 CERTIFICATION OF MEMBERS OF OUT-OF-STATE BARS

(a) Persons Authorized to Appear. A member of an out-of-state bar may practice law in Florida ~~pursuant to~~under this chapter if the member of the out-of-state bar:

(1) ~~the appearance is made as~~is an employee of the attorney general, a state attorney, a public defender, or the capital collateral representative; ~~and~~

(2) ~~the member of an out-of-state bar has made application~~has applied for admission to The Florida Bar; ~~and~~

(3) ~~the member of an out-of-state bar~~ submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(4) ~~the member of an out-of-state bar~~ is in good standing with that bar, is eligible to practice law in that jurisdiction, and is not currently the subject of disciplinary proceedings.

(b) Term of Certification. The maximum term of certification under this section is 12 months from the date of certification~~; provided, however, that the certification may extend~~but may be extended beyond 12 months if the certificate holder has passed the Florida bar examination and is awaiting the results of the character and fitness evaluation of the Florida Board of Bar Examiners. ~~Certification may be withdrawn in the same manner as provided for the withdrawal of certification by a law school dean.~~

(c) Termination of Certification. Failure to take the next available Florida bar examination, failure of any portion of the Florida bar examination, or denial of admission to The Florida Bar terminates certification under this rule.

(d) Withdrawal of Certification. Certification may be withdrawn in the same manner as the law school dean's withdrawal of certification.

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

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

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

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

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

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

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

14-4. INSTITUTION OF PROCEEDINGS
RULE 14-4.1 ARBITRATION PROCEEDINGS

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

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

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

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

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

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

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

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

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

CHAPTER 19 CENTER FOR PROFESSIONALISM
~~RULE 19-1.5 RELATIONSHIP TO THE SUPREME COURT COMMISSION ON PROFESSIONALISM~~

~~The commission on professionalism has been established by administrative order of the Supreme Court of Florida and has been charged~~

~~with the planning and implementation of an ongoing plan and policy to ensure that the fundamental ideals and values of the justice system and the legal profession are inculcated in all of those persons serving or seeking to serve in the system.~~

~~The center shall endeavor to assist the commission in this regard consistent with the center's funding, staffing, operational, and reporting structure.~~

CHAPTER 20 FLORIDA REGISTERED PARALEGAL PROGRAM
20-5. INEGIGIBILITY FOR REGISTRATION OR RENEWAL
RULE 20-5.1 GENERALLY

~~The following individuals are~~A person is ineligible for registration ~~as a Florida Registered Paralegal~~ or ~~for~~ renewal of a registration ~~that was previously granted~~ to become a Florida Registered Paralegal if that person:

(a) ~~a person who~~ is currently suspended or disbarred or ~~who~~ has resigned or been revoked in lieu of discipline from the practice of law in any state or jurisdiction;

(b) ~~a person who~~ has been convicted of a felony in any state or jurisdiction and ~~whose~~has not had the person's civil rights ~~have not been~~ restored;

(c) ~~a person who~~ has been found to have engaged in the unlicensed ~~(~~or unauthorized~~)~~ practice of law in any state or jurisdiction within 7 years of the application date;

(d) ~~a person whose~~has had that person's registration or license to practice ~~has been~~ terminated or revoked for disciplinary reasons by a professional organization, court, disciplinary board, or agency in any jurisdiction;

(e) ~~a person who~~ is no longer primarily performing paralegal work as defined elsewhere in these rules;

(f) ~~a person who~~ fails to comply with prescribed continuing education requirements as set forth elsewhere in this chapter; ~~or~~

(g) ~~a person who~~ is providing services directly to the public as permitted by case law and subchapter 10-2 of these rules; or

(h) engages in conduct involving dishonestly, fraud, deceit, or misrepresentation in the application or reapplication process.

CHAPTER 21 MILITARY SPOUSE AUTHORIZATION TO ENGAGE IN THE PRACTICE OF LAW IN FLORIDA
21-3. CONTINUING LEGAL EDUCATION REQUIREMENTS
RULE 21-3.1 CONTINUING LEGAL EDUCATION

(a) Basic Skills Course Requirement. A lawyer certified to practice law in Florida as a military spouse must complete the basic skills course requirement as set forth in subchapter 6-12 of these rules within 6 months of initial certification.

(b) Exemption and Deferment. A lawyer certified to practice law in Florida as a military spouse is not eligible for exemption from or deferral of the basic skills course requirement.

(c) Minimum Ongoing Requirement. A lawyer certified to practice law in Florida as a military spouse must complete 11 hours of continuing legal education during each year the authorization is renewed, including 1 hour of technology ~~each year~~ and 2 hours of legal ethics, professionalism, bias elimination, substance abuse, or mental ~~illness awareness~~health and wellness each year.