

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULES
REGULATING THE FLORIDA BAR –
CHAPTERS 3 AND 14

CASE NO. SC22-1293

**CORRECTED PETITION TO AMEND
RULES REGULATING THE FLORIDA BAR**

The Florida Bar (the bar) corrects its original petition, filed with this Court on October 3, 2022. This Court granted the bar's October 24, 2022 motion to correct the bar's petition on October 25, 2022.

This corrected petition adds the bar's Board of Governors waiver of strategic review under the listing for rules 3-5.2 and 3-7.16 (pp. 6 and 18 of this corrected petition) and removes the incorrect statement regarding strategic review under rule 3-7.16 (p. 18 of this corrected petition). Otherwise, the petition is the same as the original petition filed on October 3, 2022.

The bar requests an order amending the Rules Regulating the Florida Bar and states:

Jurisdictional Statement

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors) under R. Regulating Fla. Bar 1-12.1.

Organization of Amendments

The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. The bar is filing 4 petitions simultaneously that include rules amendments approved by the Board of Governors after submission of the last biennial petition in October 2020. The petitions are separated by topic: amendments relating to lawyer discipline, amendments to the lawyer advertising rules in subchapter 4-7, amendments relating to the Board of Specialization and Legal Education, and miscellaneous amendments. This petition contains amendments relating to lawyer discipline in chapters 3 and 14. This section provides information regarding development of these rules proposals as required by Part III of this Court's June 14, 2006 administrative order number AOSC 06-14, *In Re: Guidelines for Rules Submissions*. Each entry provides the following information: an explanation of each amendment; the reasons for each recommended change; the sources of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the Board of Governors; and dissenting views within the Board of Governors, if any, regarding each submission.

Some rules were the subject of multiple proposed revisions that were considered at different times. When that occurred, those amendments are reported as separate items to better reflect the distinctive aspects of their development.

Amendments

CHAPTER 3 RULES OF DISCIPLINE

3-2 DEFINITIONS

RULE 3-2.1 GENERALLY

Summary: Reorders and re-letters subdivisions so that the definitions are in alphabetical order.

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

Source: Board of Governors Member Brian Burgoon

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on July 16, 2020.
- Program Evaluation Committee approved 19-0 on a strategic basis on October 22, 2020.
- Rules Committee approved 7-0 on a procedural basis on November 16, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on November 20, 2020.

Board Action: Board of Governors approved on consent calendar without objection on December 4, 2020.

3-5 TYPES OF DISCIPLINE

RULE 3-5.1 GENERALLY

Summary: Within subdivision (b)(1), adds potential or actual harm to the factors which will not allow a finding of minor misconduct in a lawyer discipline case absent unusual circumstances. Within subdivision (b)(3), clarifies that the procedure for handling rejection of minor misconduct is to file a formal complaint and changes the time to accept an offer of minor misconduct from 15 to 30 days. Within subdivision (b)(5), adds the 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.

Reasons: Regarding subdivision (b)(1), generally in bar discipline cases, lawyers are not eligible for minor misconduct if the misconduct results in potential or actual harm because minor misconduct is inappropriate then; the change to the rule makes clear that this is the case. Regarding subdivision (b)(3), the changes make procedure and terminology consistent with rule 3-7.4(n). Changes to subdivision (b)(3) also increase the time for a

respondent to reject minor misconduct from 15 to 30 days to give respondents more time to consider whether to accept the finding of minor misconduct. Regarding subdivision (b)(5), technically, the rule only provides for an admission of minor misconduct when a grievance committee finds probable cause. However, on occasion, the Board of Governors finds probable cause. The amendments would make clear that a respondent can tender a written admission of minor misconduct when it is the Board of Governors that finds probable cause to afford respondents the same procedure as if a grievance committee found probable cause. Additionally, amendments change the time frame to give respondents more time to accept an offer of minor misconduct or tender an offer of minor misconduct to the bar.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 4-0 on a substantive basis on July 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on August 24, 2021.
- Rules Committee approved 5-0 on a procedural basis with style edits on August 25, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on September 30, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

RULE 3-5.1 GENERALLY

Summary: Within subdivision (d), removes references to publication in the Southern Reporter.

Reasons: Public reprimands no longer are automatically published in the Southern Reporter, so the amendments update the language of the rule consistent with the current practice.

Source: Board of Governors

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved on a substantive basis 6-0 on January 28, 2021.
- Program Evaluation Committee approved 17-0 on a strategic basis on March 4, 2021.
- Rules Committee approved 6-0 on a procedural basis with style edits on March 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 19, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

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 Supreme Court of Florida.

Reasons: Changes would require electronic filing of documents in bar discipline cases. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically. Additionally, the rule is re-organized to move related subdivisions together and make the rule easier to follow.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- The Disciplinary Procedure Committee approved 5-0 on a substantive basis with style edits by email vote concluding March 24, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.

- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 7, 2022.
- Board of Governors voted 42-1 to waive strategic review by the Program Evaluation Committee on October 24, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

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.

Reasons: Rule 3-5.3 currently does not provide for diversion before the filing of a formal complaint, while rule 3-7.9 allows for a conditional guilty plea before filing a complaint. The amendment makes rule 3-5.3 consistent with rule 3-7.9.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 4-0 on a substantive basis on July 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on August 24, 2021.
- Rules Committee approved 5-0 on a procedural basis on August 25, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on September 30, 2021.
- Referred back to Disciplinary Procedure Committee at the request of Board of Governors member Jay Kim to determine if approval by staff counsel in new subdivision (h) is consistent with 3-7.9.
- Disciplinary Procedure Committee approved removing "bar counsel and" in 2 places on March 21, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

3-6 EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

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. Within subdivision (a) adds lawyers who are suspended or disbarred by another disciplinary agency of any jurisdiction. Within subdivision (a), adds that disbarred includes disciplinary resignation, revocation, permanent retirement in lieu of discipline, and their substantial equivalents.

Reasons: The bar proposes adding subdivision (a)(2) to include lawyers who are suspended or disbarred by another agency or in another jurisdiction because the same rationale applies for the restrictions: they also should not have direct client contact to avoid any possibility of the unlicensed practice of law, should not have access to trust accounts, and should not act in a fiduciary capacity. Proposed subdivision (a)(3) merely clarifies and puts lawyers on notice that the term disbarred includes all functional equivalents of disbarment. Regarding additions in proposed subdivision (a)(4), the bar did not prosecute violations of Rule 3-6.1 in a recent diversion case because the lawyer did not directly hire the disbarred lawyer but instead suggested that the client hire the disbarred lawyer. Lawyers will not be able to evade application of this rule by having a client hire a suspended, disbarred, or incapacitated lawyer directly. Lawyers will also be put on notice that the rule applies even if the lawyer does not directly hire the suspended, disbarred, or incapacitated lawyer.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 6-0 on a substantive basis on October 22, 2020.
- Disciplinary Procedure Committee approved further amendments 5-0 on December 3, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 15, 2021.
- Rules Committee approved 5-0 on a procedural basis with style changes on January 22, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on January 28, 2021.
- Disciplinary Procedure Committee approved further amendments, adding permanent disbarment in lieu of discipline, 4-0 on March 4, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment again on June 23, 2021.

Board Action: Board of Governors approved on voice vote without objection on July 23, 2021.

3-7 PROCEDURES

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."

Reasons: Subdivisions (a)(2), (3) and (5), are reworded to clarify when disciplinary information becomes public; no substantive changes are proposed. Amendments to subdivision (a)(3) also correct a rule reference from rule 3-3.2(a) to rule 3-3.2(b). Amendments to the title and substance of subdivision (a)(5) reflect a change to the name of the program to include fee arbitration. Amendments to subdivision (j) are proposed to make the last paragraph of subdivision (j) consistent with the first paragraph of subdivision (j) and to more clearly reflect the purpose of the rule.

Source: Rules Committee

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved amendments to (a)(3), (a)(5) and (j) 6-0 on a substantive basis on October 22, 2020.
- Disciplinary Procedure Committee approved further amendments 5-0 on December 3, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 15, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on January 28, 2021.
- Rules Committee approved on a procedural basis with style changes on March 22, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

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 a reference to rule 3-7.11 on subpoena issuance.

Reasons: The amendment assists those unfamiliar with chapter 3 by indicating where information can be found on how subpoenas are issued.

Source: Bar staff

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on March 21, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal assessment on April 6, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

Summary: Within subdivision (n), conforms to current bar procedure for rejection of admonishment and makes the subdivision consistent with rule 3-5.1(b)(3), including changing the time period from 15 to 30 days for the respondent to accept an offer of minor misconduct.

Reasons: The changes make rules 3-5.1(b)(3) and 3-7.4(n) consistent in handling of cases where admonishment or minor misconduct is found or offered. Expanding the time period gives respondents more time to accept an offer of misconduct.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 4-0 on a substantive basis with a change of 15 days to 30 days on July 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on August 24, 2021.
- Rules Committee approved 5-0 on a procedural basis on August 25, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on September 30, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

Summary: Within subdivision (e), changes "board of governors" to "appropriate designated reviewer."

Reasons: Board of Governors member Brian Burgoon raised a possible conflict between rules 3-7.4 and 3-7.6 and Standing Board Policy 15.55. The rules provide that the Board of Governors may defer disciplinary investigation pending civil, criminal, and administrative proceedings, while the standing board policy

indicates that cases may be deferred with the concurrence of the designated reviewer. The changes make the rules and standing board policy consistent with deferral on the concurrence of the designated reviewer.

Source: Board of Governors

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 5-0 on a substantive basis on December 3, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 15, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on January 28, 2021.
- Rules Committee approved 6-0 on a procedural basis on March 22, 2021.

Board Action: Board of Governors approved on voice vote without objection on May 21, 2021.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

Summary: Within subdivision (c), adds a reference to subpoena procedure in rule 3-7.11.

Reasons: The rule assists those unfamiliar with chapter 3 by providing a reference to another rule addressing how subpoenas are issued in lawyer discipline cases.

Source: Bar staff

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 5-0 on a substantive basis by email vote ending on March 25, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 7, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on July 28, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

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

Reasons: Changes would require electronic filing of documents in bar discipline cases. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on March 21, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 6, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

Summary: Within subdivision (h), removes disciplinary revocation from cases in which other pending disciplinary cases may be dismissed. Adds that other pending disciplinary cases will be dismissed when disciplinary revocation is granted.

Reasons: The amendments make subdivision (h) consistent with Rule 3-7.12(d) on disciplinary revocation, which was amended after rule 3-7.7(h) was adopted and which states that the order granting disciplinary revocation will dismiss all pending disciplinary cases.

Source: Board of Governors

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 5-0 on a substantive basis on December 3, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 15, 2021.
- Rules Committee approved 5-0 on a procedural basis on January 22, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on January 28, 2021.

Board Action: Board of Governors approved 41-0 on March 5, 2021.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

Summary: Within subdivision (c)(1), clarifies confusing language regarding jurisdictional nature of notices to seek review and cross-review.

Reasons: The current language is confusing. The changes make clear that the party failing to timely file review or cross-review has no right to this Court's review, but this Court may use its discretion to consider a late-filed notice.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 6-0 on a substantive basis by email vote concluding March 24, 2022.
- Rules Committee approved 7-0 on a procedural basis by email vote on April 6, 2022.

- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 7, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

Summary: Within subdivision (c)(1), adds electronic filing in a manner approved by the Court.

Reasons: Changes would require electronic filing of documents in bar discipline cases. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on March 21, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 7, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

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.

Reasons: The amendments ensure that the appropriate constituent of the client, the designated reviewer, reviews and approves rejection of an offer by a respondent and bar counsel alone cannot reject an offer by a respondent.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 4-0 on a substantive basis on July 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on August 24, 2021.
- Rules Committee approved 5-0 on a procedural basis on August 25, 2021.
- Program Evaluation Committee approved 20-0 on a strategic basis on September 30, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

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

Reasons: Changes would require electronic filing of documents in bar discipline cases. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically. Regarding the change to

subdivision (f)(4)(B), the subdivision is not entirely clear. The bar has recently had reinstatement cases in which, based on the language of the current rule, it was unclear whether the bar exam results, which would be invalid under Rules of the Supreme Court Relating to Admissions to the Bar rules, could be accepted for reinstatement purposes. The amendment provides a bright line rule for when bar exam results are valid for reinstatement purposes.

Source: Bar staff

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on March 21, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 6, 2022.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

Summary: New subdivision (f)(1)(O) adds 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.

Reasons: The bar has seen reinstatement cases where lawyers have failed to remove themselves from their professional websites and social media pages, making them appear as if they are eligible to practice when they are suspended.

Source: Bar staff

Background Information – Member Commentary / Committee

Action:

- Disciplinary Procedure Committee approved 5-0 on a substantive basis on May 20, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on June 23, 2021.
- Rules Committee approved 4-0 on a procedural basis with style edits on July 22, 2021.
- Program Evaluation Committee approved 12-0 on a strategic basis on July 22, 2021.

Board Action: Board of Governors approved on voice vote without objection on December 3, 2021.

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

Summary: Within subdivision (b), adds that filing will be in an electronic format approved by the court. The rule is also reorganized. Adds new subdivision (d) on the effect of disciplinary revocation.

Reasons: Changes would require electronic filing of documents in bar discipline cases. This Court often receives boxes of paper that constitute filing of an appeal in lawyer discipline cases. The change will make it easier for this Court to maintain the records and also easier for any party to determine the official record solely from the electronic filings. The change also brings lawyer discipline cases consistent with most other court filings, which are required to be done electronically. New subdivision (d) includes information on the effect of disciplinary revocation, which is from case law and also is already reflected in the comment.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on March 21, 2022.
- Rules Committee approved 5-0 on a procedural basis with style edits on March 30, 2022.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 6, 2022.

- Program Evaluation Committee approved 14-0 on a strategic basis on May 19, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2022.

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.

Reasons: The current rule is unclear, and members of the public have questioned why the bar does not discipline constitutional officers who currently hold office. This Court in the case of *The Florida Bar v. McCain*, 330 So. 2d 712 (Fla. 1976) determined that the bar does not have disciplinary authority over a sitting judge or constitutional officer (such as an elected state attorney or public defender), but after leaving office, those officials are subject to prosecution by the bar for violations of Rules Regulating The Florida Bar committed while in office). See also, e.g., Fla. Const. art. V, §12, (Judicial Qualifications Commission has disciplinary authority over judges); FN 8, Burgoon, “Florida’s Lawyer Discipline System: What Every Attorney Needs to Know,” *Florida Bar Journal*, Vol. 95, No. 1 (January/February 2021).

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 4-0 on a substantive basis on March 4, 2021.
- Rules Committee approved 6-0 on a procedural basis with style edits on March 22, 2021.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on April 8, 2021.
- Board of Governors voted 42-1 to waive strategic review by the Program Evaluation Committee on October 24, 2022.

Board Action: Board of Governors approved on voice vote without objection on July 23, 2021.

CHAPTER 14 GRIEVANCE MEDIATION AND FEE ARBITRATION

14-1 ESTABLISHMENT

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.

14-4 INSTITUTION OF PROCEEDINGS

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.

14-5 EFFECT OF AGREEMENT TO MEDIATE OR ABRITRATE AND FAILURE TO COMPLY

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.

Reasons: Rules Reg. Fla. Bar 14-1.2, 14-4.1, and 14-5.2 above are amended to add to the Fee Arbitration Program's jurisdiction the resolution of disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fee "or cost" paid, charged, or claimed for legal services. Disputes over a lawyer's bill often involve the costs of litigation, including office charges for photocopies or online research as well as out of pocket costs for experts, deposition transcripts, filing fees and service of process. The amendment clarifies that in every instance where the determination of a fee is being considered, the rule also permits the determination of a cost.

Source: Standing Committee on Grievance Mediation and Fee Arbitration

Background Information – Member Commentary / Committee Action:

- The Standing Committee on Grievance Mediation and Fee Arbitration approved 14-0 on October 1, 2020.
- Disciplinary Procedure Committee approved 6-0 on a substantive basis on October 22, 2020.
- Program Evaluation Committee approved 18-0 on a strategic basis on December 3, 2020.
- Rules Committee approved 6-0 on a procedural basis on December 7, 2020.
- The bar's chief financial officer agreed with de minimis fiscal impact assessment on January 15, 2021.

Board Action: Board of Governors approved on voice vote without objection on January 29, 2021.

Official Notice of Amendments

The bar's official notice of intent to file all the proposals in this petition was published in the September 1 issue of the bar *News as required by R. Regulating Fla. Bar 1-12.1(g)*. A copy of the notice including the extracted text in legislative format published on the bar's website is included with this petition in Appendix C. The online notice can also be found at:

<https://www.floridabar.org/the-florida-bar-news/biennial-florida-bar-rules-proposals-2/>

Editorial Corrections and Request for Waiver of Rules Procedures

During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors but were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14,

2006, *In Re: Guidelines for Rules Submissions*. All of these editorial errors were corrected in the extracted text in legislative format published in the official bar *News* notice online. The editorial corrections are noted in the right-hand column of Appendix B and enumerated in a separate list in Appendix D, p. D-2.

The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal and the amendments themselves are non-controversial. The bar therefore requests that this Court accept these additional edits and waive approval by the Board of Governors under R. Regulating Fla. Bar 1-12.1(i).

All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

Other Pending Amendments

There is 1 pending petition involving amendments to Rules Regulating the Florida Bar: *In re Amendments to Rules Regulating the Florida Bar- Chapter 23 Registered Online Service Provider Program*, Case No. SC19-2077, filed December 12, 2019. The amendments in that petition are solely to propose new Chapter 23 of the Rules Regulating The Florida, there are no amendments to proposed Chapter 23 in this petition, and the 2 petitions may be considered independently of each another.

Contents of Appendices

The complete text of all proposals is included in Appendix A to this petition in legislative format (deleted language struck through, shown first, followed by new language underlined).

A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed

amendments in legislative format and an abbreviated recitation of the reasons for the changes.

The notice of intent to file this petition is provided in Appendix C.

Comments in Response to Amendments

No comments were received by the bar in response to these amendments.

Oral Argument Not Requested

The bar does not seek oral argument regarding these amendments unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

Effective Date Request

The bar requests that any amendments in response to this petition be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition.

Respectfully submitted,

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

Gary Shepard Lesser
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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this petition is typed in 14-point Bookman Old Style type.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

CERTIFICATE OF READ-AGAINST

The Rules Regulating The Florida Bar were amended on June 2, 2022, effective August 1, 2022, in SC20-1467 In re: Amendments to the Rules Regulating The Florida Bar- Biennial Petition. The most recent copy of Thomson Reuters contains amendments up to February 15, 2022. For that reason, rules 3-5.2, 3-7.1, and 3-7.7 were read against the court's order.

I certify that the other Rules Regulating the Florida Bar set forth within this petition have been read against the most recent copy of *Thomson Reuter's Florida Rules of Court*.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902