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APPENDIX A

PROPOSED AMENDMENT IN LEGISLATIVE FORMAT

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RULES REGULATING THE FLORIDA BAR

CHAPTER 3 RULES OF DISCIPLINE
SUBCHAPTER 3-5 TYPES OF DISCIPLINE
RULE 3-5.2 EMERGENCY SUSPENSION; EMERGENCY SUSPENSION RELATING TO FELONY CHARGES; ~~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.* ~~On petition of The Florida Bar, authorized by its president, president-elect, or executive director, 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, the~~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.* ~~On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbarring a lawyer from the practice of law, the~~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. ~~See subdivision (*l*) of rule 3-7.2.~~

(3) *Formal Complaint, Answer, and Defenses.* A petition for emergency suspension ~~will~~ also constitutes a formal complaint. The respondent ~~will have~~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, a copy of which will be served on bar counsel. 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 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 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) Emergency Suspension Relating to Felony Charge Causing Great Public Harm.

(1) *Request for Response.* The Florida Bar will request that a lawyer respond in writing within 15 days to allegations raised in the charging documents on the bar's receipt of copies of documents formally charging the lawyer with a felony which, if proven, would establish clearly and convincingly that the lawyer appears to have caused or be causing great public harm.

(2) *Notice of Institution of Felony Charge Causing Great Public Harm.* The Florida Bar will file a "Notice of Institution of Felony Charge Causing Great Public Harm" on review of the charging documents and any response by the lawyer if the bar determines emergency suspension is warranted because the allegations in the charging documents, if proven, would establish clearly and convincingly that the lawyer appears to have caused or be causing great public harm. The notice will attach:

(A) a copy of the charging document;

(B) any response by the respondent;

(C) the bar's documentation indicating that the respondent did not respond after the bar's request for a response notifying the respondent of the charge and the obligation to respond in writing within 15 days, if the bar received no response; and

(D) any other relevant information in the bar's possession.

(3) *Appointment of Referee.* If the respondent files a response, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee. The referee must conduct a hearing and make a recommendation within 30 days of appointment whether the Supreme Court of Florida should issue an emergency suspension order. The referee must consider the totality of the circumstances regarding the felony charge, including, but not limited to:

(A) the nature of the charge;

(B) the respondent's response; and

(C) the potential impact that the charge will have on:

(i) the respondent's duties to existing clients;

(ii) the legal community and judicial system; and

(iii) the public.

(4) *Emergency Suspension Order.* The Supreme Court of Florida may issue an order suspending the respondent on an emergency basis relating to a felony charge causing great public harm on:

(A) the filing of the notice and the bar's documentation that the respondent did not respond after the bar's request for a response notifying the respondent of the charge and the obligation to respond in writing within 15 days; or

(B) the filing of the notice, response, and the referee's recommendation.

If suspended, the respondent will remain suspended until further order of the Supreme Court of Florida.

(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) *Motion for Dissolution.* The lawyer may move to dissolve or amend an emergency suspension order by motion filed with the Supreme Court of Florida only after the case is dismissed by the

prosecutor or the court in which the felony case is filed or there has been an amendment to the charging document that reduces the charge to a misdemeanor. The motion must include a certified copy of the dismissal or amended charging document. The filing of the motion will not stay the operation of an emergency suspension order entered under this subdivision. The Supreme Court of Florida may dissolve or amend the emergency suspension order as the court deems appropriate.

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

(1) 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~~. Such order may be issued up~~ 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 ~~for protection of~~to protect the public.

(2) *Formal Complaint, Answer, and Defenses.* ~~This~~The petition ~~will~~ also constitutes the formal complaint. The respondent ~~will have~~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 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~~d) Trust Accounts.

(1) *Effect of Order Restricting Lawyer Trust Account.* Any order of emergency suspension, emergency suspension relating to felony charge causing great public harm, ~~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 ~~will serve 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 ~~the bank(s)~~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 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)~~(B) In all other instances, a~~*Summary Proceedings.* ~~A referee shall 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 such event, the funds will be unfrozen.~~

~~(d) Referee Review of Frozen Trust Account Petitions.~~ (7) *Referee Review of Frozen Trust Account Petitions.* The referee ~~will~~ 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. ~~If~~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~~, then the referee may hold a hearing~~. Subchapter 3-7 will not apply to a referee hearing under this rule. No pleadings ~~will~~may be filed~~, only~~ other than petitions requesting release of frozen trust account funds. The parties to this referee proceeding ~~will be~~are those persons filing a petition requesting release of frozen trust account funds. The bar ~~will~~is not ~~be~~ a party to the proceeding. The referee's order ~~will be~~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 ~~will be~~is determination of ~~ownership of~~entitlement to the frozen trust account funds. The referee ~~will~~ 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. ~~A~~The referee will order a pro rata distribution ~~is the method of distribution when~~if there are insufficient funds in the account to pay all claims in full.

(8) *Separate Funds in Frozen Trust Accounts.* The referee will order return of any separate funds to their rightful owner 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 in the respondent's trust account after the misappropriation that 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 ~~decision~~final order is subject only to direct petition for review ~~of the referee's final order~~ by a party claiming ~~an ownership interest in~~entitlement to the frozen trust account 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 will be~~Briefing schedules after the petition for review is filed are as set forth in subchapter 3-7 of these rules.

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

~~**(f) New Cases and Existing Clients.** Any order of emergency suspension issued under this rule will immediately preclude the attorney from accepting any new cases and, unless otherwise ordered permit the attorney to continue to represent existing clients for only the first 30 days after issuance of an emergency order. Any fees paid to the suspended attorney during the 30-day period will 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 dissolution or amendment of an emergency order by motion filed with the Supreme Court of Florida, a copy of which will be served on bar counsel. The motion will not stay any other proceedings and applicable time limitations in the case and, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion, will immediately be assigned to a referee designated by the chief justice. 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 date of the hearing. The referee will recommend dissolution or amendment, whichever is appropriate, to the extent that bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations.~~

~~**(j) Successive Motions Prohibited.** Successive motions for dissolution will be summarily dismissed by the Supreme Court of Florida to the extent that they raise issues that were or with due diligence could have been raised in a prior motion.~~

~~**(k) Review by the Supreme Court of Florida.** On receipt of the referee's recommended order on the motion for dissolution or amendment, the Supreme Court of Florida will review and act upon the referee's findings and recommendations regarding emergency suspensions and interim probations. 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 pursuant to this rule. Briefing schedules following the petition for review will be 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 as set forth in 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 upon order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken.~~

(~~m~~e) Proceedings in the Supreme Court of Florida. ~~Consideration of the referee's report and recommendation regarding emergency suspension and interim probation will be expedited in the~~The Supreme Court of Florida will expedite consideration of the referee's report and recommendation regarding emergency suspension, emergency suspension relating to felony charge causing great public harm, and interim probation. ~~If oral argument is granted, the~~The chief justice will schedule oral argument as soon as practicable, if granted.

(~~n~~f) 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.