Filing # 145369243 E-Filed 03/09/2022 12:29:54 PM

RECEIVED, 03/09/2022 12:30:40 PM, Clerk, Supreme Court

# AMENDED APPENDIX B

## SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

## March 9, 2022

| | |
|---|---|
| **RULES REGULATING THE FLORIDA BAR**<br><br>**CHAPTER 3 RULES OF DISCIPLINE**<br><br>**SUBCHAPTER 3-5 TYPES OF DISCIPLINE**<br><br>**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** | Additions to title reflect new felony charge suspension and adds freezing trust accounts, which already exists in the rule but was not in the title. |
| **(a) ~~Petition for~~ Emergency Suspension.**<br><br>(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.<br><br>(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 | Non-substantive changes to conform to this Court's *Guidelines on Rules Submissions,* AOSC 06-14 (Fla. 2006), are not discussed in this column. The entire rule is re-organized to place appropriate provisions together with the other provisions to which they apply so that, e.g., all subdivisions applying to emergency suspension are together and all subdivisions applying to |

| | |
|---|---|
| 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~~. | freezing trust accounts are together. |
| (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. | New subdivision (a)(4) is moved from current subdivision (h). |
| (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. | New subdivision (a)(5) is moved from current subdivision (f). |

| | |
|---|---|
| (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. | New subdivision (a)(6) is moved from current subdivision (g). |
| (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. | New subdivision (a)(7) is moved from current subdivision (j). |
| (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 | New subdivision (a)(8) is moved from current subdivision (i). |

| | |
|---|---|
| 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. | New subdivision (a)(9) is moved from current subdivision (k). |
| (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. | New subdivision (a)(10) is moved from current subdivision (*l*).<br><br>**Subdivision (b), Emergency Suspension Relating to Felony Charge Causing Great Public Harm** |

| | |
|---|---|
| **(b) Emergency Suspension Relating to Felony Charge Causing Great Public Harm.**<br><br>(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.<br><br>(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:<br><br>(A) a copy of the charging document;<br><br>(B) any response by the respondent;<br><br>(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 | This Court requested the bar review rule 3-5.2 to create a temporary suspension for lawyers charged with felonies in state or federal court by letter dated June 11, 2021, directing that a petition be filed by October 11, 2021. This proposal directs the bar to request a response in writing within 15 days from a lawyer charged with a felony that, if proven, would establish clearly and convincingly that the lawyer appears to have caused or is causing great public harm. The Florida Bar will then file a notice with the Court including specified documents, including the charging documents and either the lawyer's response or the bar's documentation that the lawyer did not respond. If the lawyer has responded, the Court will appoint a referee to |

| | |
|---|---|
| the obligation to respond in writing within 15 days, if the bar received no response; and<br><br>(D) any other relevant information in the bar's possession.<br><br>(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:<br><br>(A) the nature of the charge;<br><br>(B) the respondent's response; and<br><br>(C) the potential impact that the charge will have on:<br><br>(i) the respondent's duties to existing clients;<br><br>(ii) the legal community and judicial system; and | make a recommendation to the Court within 30 days. If the lawyer does not respond or after the referee report, the Court may suspend the lawyer. The proposed amendments address the effect of the suspension order and provides that the respondent lawyer may move to dissolve the suspension only if the charges are dismissed or reduced to a misdemeanor.<br><br>The Florida Bar Board of Governors, its Disciplinary Procedure Committee, and Criminal Law Section have expressed concerns over whether respondents will obtain due process, as they could be suspended without a hearing either in the underlying criminal case or through the disciplinary process. In light of those concerns, the board hopes that |

| | |
|---|---|
| (iii) the public.<br><br>(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:<br><br>(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<br><br>(B) the filing of the notice, response, and the referee's recommendation.<br><br>If suspended, the respondent will remain suspended until further order of the Supreme Court of Florida.<br><br>(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 | the Court will not order suspension as a matter of course and, rather than viewing suspension as a default position, hopes the Court will review the issue of whether individual respondents will be subject to an emergency suspension due to felony charge on a case-by-case basis. |

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~~. 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. | New subdivision (c)(3) is moved from current subdivision (h). |
| (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 | New subdivision (c)(4) is moved from current subdivision (f). |

| | |
|---|---|
| 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.<br><br>(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.<br><br>(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 | New subdivision (c)(5) is moved from current subdivisions (i) and (*l*). |

| | |
|---|---|
| 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. | New subdivision (c)(6) is moved from current subdivision (k). |
| **(~~e~~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 ~~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. | New subdivision (d)(2) is moved from current subdivision (h). |
| (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.<br><br>(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.<br><br>(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.~~<br><br>~~**(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. | New subdivision (c)(8) is moved from current subdivision (e). |
| (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. | New subdivision (9) is moved from current subdivision (d) above. |
| ~~**(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~~ | Subdivision (f) is moved to new subdivisions (a)(5) and (c)(4) above. |

| | |
|---|---|
| ~~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.~~ | Subdivision (g) is moved to new subdivision (a)(6) above. |
| ~~**(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~~ | Subdivision (h) is moved to new subdivisions (a)(4), (c)(3), and (d)(2) above. |

| | |
|---|---|
| ~~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.~~ | Subdivision (i) is moved to new subdivisions (a)(8) and (c)(5) above. |
| ~~**(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.~~ | Subdivision (j) is moved to new subdivision (a)(7) above. |
| ~~**(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~~ | Subdivision (k) is moved to new subdivisions (a)(9) and (c)(6). |

| | |
|---|---|
| ~~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.~~ | Subdivision (*l*) is moved to new subdivision (a)(10) and (c)(5). |
| **(~~m~~e) 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, emergency suspension relating to felony charge causing great public harm, and interim | New subdivision (e) is applicable to all other provisions and therefore only is re-lettered. |

| | |
|---|---|
| probation. The chief justice will schedule oral argument as soon as practicable, if granted.<br><br>**(~~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. | New subdivision (f) is applicable to all other provisions and therefore only is re-lettered. |