

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE:  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR –  
Rules 3-7.6 AND 3-7.10 (CIVIL MEDIATION)

CASE NO. SC22-

**THE FLORIDA BAR'S PETITION TO AMEND THE RULES  
REGULATING THE FLORIDA BAR - RULES 3-7.6 AND 3-7.10  
(CIVIL MEDIATION)**

The Florida Bar (the bar) petitions this Court for 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. Reg. Fla. Bar 1-12.1.

**Explanation**

The bar proposes amendments to existing Rules Reg. Fla. Bar 3-7.6 and 3-7.10 at this Court's request. The Court referred the issue by letter dated October 29, 2021, for bar review of rule 3-7.6 after a case in which a respondent requested civil mediation in a reinstatement case: *Florida Bar v. Murtha*, Case No. SC19-1886 (Fla. 2021). In reviewing this Court's request to review Rule Reg. Fla. Bar 3-7.6, the Disciplinary Procedure Committee determined that rule 3-7.10 also was affected by the issue of civil mediation.

## Amendments

This section provides information regarding development of this proposal as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006, in *In Re: Guidelines for Rules Submissions*, including: an explanation of each substantive amendment; the reasons for each recommended change; the source of each proposal; and voting records of pertinent committees and the Board of Governors. There were no groups or individuals who commented or collaborated on the proposal during its development and there were no dissenting views within the Board of Governors. Changes to conform to the *Guidelines* above are not noted.

### CHAPTER 3 RULES OF DISCIPLINE

#### **Rule 3-7.6 Procedures Before a Referee**

##### *Explanation:*

Within subdivision (f), adds new subdivision (3) prohibiting the use of civil mediation in bar disciplinary proceedings. Within subdivision (h)(5), adds new subdivision (C) that states that referees must sign subpoenas.

##### *Reasons:*

The Court referred the issue by letter dated October 29, 2021, for bar review of rule 3-7.6 after a case in which a respondent requested civil mediation in a reinstatement case: *Florida Bar v. Murtha*, Case No. SC19-1886 (Fla. 2021). Civil mediation is not appropriate for bar disciplinary cases. This Court has established a grievance mediation program under chapter 14 of the Rules Regulating The Florida Bar. Under this Court's authority established by the Rules Regulating The Florida Bar, the bar has adopted policies for grievance mediation, including policies regarding which bar disciplinary cases are eligible for mediation. Any mediation in disciplinary cases should be conducted only under the grievance mediation program in accordance with its established policies.

The amendment to subdivision to (h)(5) addressing subpoenas was proposed by staff while this rule was under review to mirror existing rule 3-7.11(d)(1), which requires referees to sign subpoenas. The amendment to rule 3-7.6(h)(5) would bring the subpoena issue to the attention of respondents and respondents' counsel, who might not refer to rule 3-7.11(d)(1) and therefore would be unaware of this requirement.

*Source:*

Supreme Court of Florida Referral

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved 6-0 on November 17, 2021.
- The bar's chief financial officer agrees with de minimus impact assessment on November 23, 2021.
- Program Evaluation Committee approved 13-0 on January 20, 2022.
- Rules Committee approved 4-0 on a procedural basis with style edits on December 6, 2021.

*Board Action:*

Board of Governors approved on voice vote without objection on January 21, 2022.

### **Rule 3-7.10 Reinstatement and Readmission Procedures**

*Explanation:*

Within subdivision (f), adds that the referee may not refer the petition to civil or grievance mediation.

*Reasons:*

This Court referred the issue by letter dated October 29, 2021, for bar review of rule 3-7.6 after a case in which a respondent requested civil mediation in a reinstatement case: *Florida Bar v. Murtha*, Case No. SC19-1886 (Fla. 2021). In reviewing the rules, the Disciplinary Procedure Committee determined the issue would be appropriate to address in rule 3-7.10 as well as 3-7.6. Civil

mediation is not appropriate for bar disciplinary cases. The Court has established a grievance mediation program under chapter 14 of the Rules Regulating The Florida Bar. Under this Court's authority established by the Rules Regulating The Florida Bar, the bar has adopted policies for grievance mediation, including policies on which bar disciplinary cases are eligible for mediation. Any mediation in disciplinary cases should be conducted only under the grievance mediation program in accordance with its established policies.

However, reinstatement matters are not appropriate for either civil or grievance mediation. If, after investigation, the bar determines that the petitioner for reinstatement qualifies for reinstatement, the bar stipulates to reinstatement. If the bar's investigation establishes that the petitioner for reinstatement does not meet the criteria for reinstatement, the bar contests the reinstatement. The issue of whether a petitioner for reinstatement has met the criteria for reinstatement is not an issue that is appropriate for mediation: the petitioner has either met the criteria or has not.

*Source:*

Supreme Court of Florida Referral

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved 6-0 on November 17, 2021.
- The bar's chief financial officer agrees with de minimus impact assessment on November 23, 2021.
- Program Evaluation Committee approved 13-0 on January 20, 2022.
- Rules Committee approved 4-0 on a procedural basis with style edits on December 6, 2021.

*Board Action:*

Board of Governors approved on voice vote without objection on January 21, 2022.

## **Official Notice of Amendments**

Under R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file the proposals in this petition was published in the January 1, 2022 issue of the bar *News*. A copy of that published notice and the December 8, 2021 Internet notice from the bar *News* is included with this petition, in Appendix C. The Internet notice can also be found at the following link:

<https://www.floridabar.org/the-florida-bar-news/amendments-to-bar-rules-concerning-procedures-before-a-referee-and-reinstatement-and-readmission/>

### **Discrepancy with Thomson Reuters' Florida Rules of Court**

During the preparation of this petition, the bar noted discrepancies between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published in Thomson Reuters' *Florida Rules of Court*. The discrepancies are that the parentheses surrounding subdivisions (l) and (o) of rule 3-7.6 and subdivision (l) of rule 3-7.10 are italicized in Thomson Reuters' *Florida Rules of Court* but should be straight with only the letters they encompass being italicized. The bar has notified the publisher, which has indicated that it will make the corrections.

### **Editorial Corrections and Request for Waiver of Rules Procedures**

During the preparation of this petition, the bar detected a minor editorial error within this proposal as officially noticed. In Rule 3-7.6(m)(2)(A), the verb was corrected from "have" to "has" for subject/verb agreement. This editorial error was not reviewed by the Board of Governors, but was made under the authority granted

to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006. This editorial errors also was incorrect in the official bar *News* notice.

The bar submits that this deviation from the requirements of R. Regulating Fla. Bar 1-12.1 is minimal. The bar therefore requests that this minor correction be accepted by this Court, and that this Court waive Board of Governors approval and official notice in the print version of the bar *News* under R. Regulating Fla. Bar 1-12.1(i) for this 1 minor change.

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

### **Other Pending Amendments**

There are proposed amendments to the Rules Regulating The Florida Bar in 4 other petitions presently pending before this Court:

*In re: Amendments to Rules Regulating the Florida Bar- Chapter 23 Registered Online Service Provider Program*, Case No. SC19-2077, filed December 12, 2019;

*In re: Amendments to the Rules Regulating The Florida Bar - Biennial Petition*, Case No. SC20-1467, filed October 5, 2020;

*In re: Amendments to Rule Regulating The Florida Bar 4-5.5*, Case No. SC21-1379, filed October 1, 2021; and

*In re: Amendments to Rules Regulating The Florida Bar 3-5.2 (Felony Charge Suspension)*, case number pending, filed February 1, 2022.

The proposals in these 4 petitions are unrelated to this petition, do not address the same rules, and may be considered independent of this petition.

## **Contents of Appendices**

The complete text of all proposals is included in Appendix A to this petition, in legislative format (i.e., 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.

Appendix D contains the October 29, 2021 letter from this Court's Clerk, John A. Tomasino, referring this issue to the bar.

## **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**

As to all amendments sought in this filing, the bar requests that any changes be made effective 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

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Joshua E. Doyle  
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## **CERTIFICATE OF TYPE SIZE AND STYLE**

I certify that this petition is typed in 14 point Arial type.

/s/ Joshua E. Doyle

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## **CERTIFICATE OF READ-AGAINST**

I certify that the 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

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902