

APPENDIX B

SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

February 1, 2022

RULES REGULATING THE FLORIDA BAR

RULES REGULATING THE FLORIDA BAR

CHAPTER 3 RULES OF DISCIPLINE

3-7 PROCEDURES

(a) Referees.

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

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

(b) Trial by Referee. ~~When a finding has been made by a grievance committee or by the board that there is cause to~~

~~believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.~~Proceedings after assignment of a referee on the bar's filing a formal complaint are adversary proceedings conducted under this rule.

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

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

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

(f) Nature of Proceedings.

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

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

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

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

The Court referred the issue by letter dated October 29, 2021 for bar review 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. The Court has established a grievance mediation program

| | |
|---|--|
| <p>(h) Pleadings. Pleadings may be informal and shall<u>must</u> comply with the following requirements:</p> <p>(1) <i>Complaint; Consolidation and Severance.</i></p> <p>(A) Filing. The complaint shall<u>must</u> be filed in the Supreme Court of Florida.</p> <p>(B) Content. The complaint shall<u>must</u> set forth the particular act or acts of conduct for which the attorney<u>Florida Bar member</u> is sought to be disciplined.</p> <p>(C) Joinder of Charges and Respondents; Severance. A complaint may embrace any number of charges against 1 or more respondents, and charges may be against any 1 or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.</p> <p>(2) <i>Answer and Motion.</i> The respondent shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days</p> | <p>under chapter 14 of the Rules Regulating The Florida Bar. Under the 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.</p> |
|---|--|

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

(3) *Reply.* ~~If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar.~~ The bar may reply to the respondent's answer within 10 days of service on bar counsel if the respondent's answer contains any new issue or affirmative defense. Failure to reply to the respondent's answer does not prejudice the bar. All affirmative allegations in the respondent's answer shall be ~~are~~ considered as denied by The Florida Bar ~~the bar~~.

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

(5) *Filing and Service of Pleadings.*

(A) ~~Prior to~~Before Appointment of Referee. Any pleadings filed in a case ~~prior to~~before appointment of a referee ~~shall~~must be filed with the Supreme Court of Florida and ~~shall bear~~must include a certificate of service showing parties ~~upon~~ whom service of copies has been made. ~~On appointment of referee, the~~The Supreme Court of Florida ~~shall notify~~notifies the parties of ~~such~~the referee's appointment and forwards all pleadings filed with the court to the referee for action on appointment of the referee.

(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee ~~shall~~must be filed with the referee and ~~shall bear~~must include a certificate of service showing service of a copy on the bar's staff counsel and bar counsel ~~of The Florida Bar~~ and on all interested parties to the proceedings.

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

The amendment to (h)(5)(c) mirrors existing Rule 3-7.11(d)(1) which requires referees to sign subpoenas. The amendment to rule 3-7.6(h)(5) would mirror that existing requirement which would bring the issue to the attention of respondents and

~~(6) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.~~ The referee may allow pleadings to be amended. If the referee permits pleadings to be amended, the referee must allow a reasonable time for response.

~~(7) *Expediting the Trial.* If it shall be made to appear that the date of final hearing should be expedited in the public interest, the~~ The referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule if the referee determines that the proceedings should be expedited to serve the public interest.

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

(i) Notice of Final Hearing. ~~The cause may be set down for trial by either~~ Either party or the referee may set the cause for trial with at least ~~upon not less than 10 days'~~ ² notice. The trial shall ~~will~~ be held as soon as possible following the expiration of ~~after~~ 10 days from the filing of the

respondent's counsel who might not refer to Rule 3-7.11(d)(1).

respondent's answer, or, if no answer is filed, ~~then from the date when such~~the answer is due.

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

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding, and ~~shall have~~has no rights other than those of any other witness. ~~However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the~~The referee may grant the complaining witness the right to be present at any hearing when the respondent is also present after the

complaining witness has testified during the case in chief, unless the complaining witness' presence is found to be impractical due to unreasonable delay or other good cause. A complaining witness may be called upon to testify and produce evidence as any other witness. ~~Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial.~~ The bar may proceed with trial regardless of a complainant's lack of cooperation or any settlement, compromise, or restitution between the respondent and complainant. The complaining witness shall ~~have~~has no right to appeal.

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

(m) Referee's Report.

(1) ~~Contents~~Timing of Report. ~~Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause~~

~~shown, the~~ The referee shall make a report and must enter
it a report as part of the record within the later of 30 days
after the conclusion of the trial, 10 days after the referee
receives the transcripts of all hearings, or as extended by
the chief justice for good cause, but failure. Failure to
enter the report in the time prescribed ~~shall~~does not
deprive the referee of jurisdiction.

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

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

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

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

(D) ~~a statement of any past disciplinary measures~~
~~as to the respondent~~the respondent's disciplinary
history that are on record with the bar's executive
~~director of The Florida Bar or that otherwise becomes~~

known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

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

(23) *Filing of Report.* The referee's must file the report and record of proceedings ~~shall in all cases be transmitted together to~~with the Supreme Court of Florida. ~~Copies~~ The referee must serve copies of the report ~~shall be served on~~ the parties including staff counsel. Bar counsel will make a copy of the record, as ~~furnished~~filed, available to other parties on request and payment of the actual costs of reproduction. The referee may not file the report of referee and record ~~shall not be filed~~ until the time for filing a motion to assess costs has expired and no motion has been filed or, if the motion was timely filed, until the motion has been considered and a ruling entered.

(n) The Record.

(1) *Recording of Testimony.* ~~All~~A court reporter must attend and record all testimony at all hearings at which testimony is presented~~shall be attended by a court reporter who shall record all testimony.~~ Transcripts of ~~such~~ testimony are not required to be filed in the matter, ~~unless requested by a~~Any party, who shall requesting transcripts be filed in the matter must pay the cost of transcription directly to the court reporter. ~~Transcripts or ordered filed by the referee, in which case the costs thereof are subject to assessment~~ as costs as elsewhere provided in these rules.

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

(3) *Preparation and Filing.* The referee, with the assistance of bar counsel, ~~shall prepare~~s the record, ~~certify~~certifies that the record is complete, serves a copy of the index of the record on the respondent and The Florida Bar, and files the record with the office of the clerk of the Supreme Court of Florida.

(4) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee ~~for such~~

Bar staff made the non-substantive change of “have” to “has” in the petition drafting process for continuity of verb tense.

~~purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.~~

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

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

(2) *After Filing of Complaint.* ~~If the complaint has been filed against the respondent, the~~ The respondent may enter a written guilty plea of guilty thereto by filing the same after a complaint has been filed in writing with the referee to whom the cause has been assigned for trial. ~~Such~~ The referee shall ~~may~~ take such testimony thereto as may be advised on the guilty plea, following which the referee will then must enter a report as otherwise provided in this rule.

(3) *Unconditional.* ~~An unconditional plea of guilty shall not preclude~~ The court may review as

~~to~~recommended disciplinary measures ~~imposed on an~~
unconditional guilty plea.

(4) *Procedure.* ~~Except as herein provided, all~~All guilty
plea procedures in relation to disposition of the cause on
pleas of guilty shall beas elsewhere provided in these
rules, except if they conflict with this rule.

(p) Cost of Review or Reproduction.

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

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

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

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

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

(q) Costs.

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

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

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

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

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

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

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

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

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

(4) *Assessment of Respondent's Costs.* ~~When the bar is unsuccessful in the prosecution of a particular matter, the~~The referee may assess the respondent's costs against

~~the bar in the event that~~ if the bar is unsuccessful in prosecuting a matter and the bar raised there was no justiciable issue of either law or fact raised by the bar.

(5) *Time for Filing Motion to Assess Costs.* A party ~~shall~~ must file a statement of costs incurred in a referee proceeding and a request for payment of same within 15 days after written notice by the referee that the report of referee has been completed or at the time that a guilty plea for consent judgment is filed. The party from whom costs are sought may file an objection within 10 days from the date the motion was filed. Failure to timely file a motion, without good cause, ~~shall be considered as a waiver of~~ waives the right to request reimbursement of costs or to object to a request for reimbursement of costs. ~~The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Because costs may not be assessed against the respondent unless the bar is successful in some part and because costs may not be assessed against the bar unless the referee finds the lack of a justiciable issue of law or fact, this~~ This subdivision ~~shall not be construed to~~ does not require the filing of a motion to assess costs before the referee when doing so is not appropriate.

| | |
|---|--|
| <p style="text-align: center;">Court Comment</p> <p>A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.</p> <p style="text-align: center;">Comment</p> <p>Provisions for assessment of costs in proceedings before the Supreme Court of Florida are addressed in rule 3-7.7.</p> | |
|---|--|

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

(a) Reinstatement; Applicability. A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again ~~pursuant to~~ under this rule. The proceedings under this rule ~~are not applicable~~ do not apply to any lawyer who is ~~not~~ ineligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.

(b) Petitions; Form and Contents.

(1) *Filing.* The original petition for reinstatement must be verified by the petitioner and filed with the Supreme Court of Florida in compliance with the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration. A copy must be served on staff counsel, The Florida Bar, in compliance with applicable court rules. The petition for reinstatement may not be filed until the petitioner has completed at least 80% of the term of that lawyer's period of suspension.

(2) *Form and Exhibits.* The petition must be in the form and accompanied by the exhibits provided for elsewhere in this rule. The information required

concerning the petitioner may include any or all of the following matters, in addition to any other matters that may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and employment related information; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition must also include copies of all pleadings in the matter leading to placement on the inactive list and all other matters reasonably required to demonstrate the character and fitness of the petitioner to resume the practice of law.

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

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

incapacity proceedings have been paid and restitution has been made.

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

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

(1) *Disqualifying Conduct.* A record manifesting a deficiency in the honesty, trustworthiness, diligence, or

The Court referred the issue by letter dated October 29, 2021 for bar review 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. The Court has established a grievance mediation program under chapter 14 of the Rules Regulating The Florida Bar.

reliability of a petitioner may constitute a basis for denial of reinstatement. The following are considered disqualifying conduct:

- (A) unlawful conduct;
- (B) academic misconduct;
- (C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;
- (D) misconduct in employment;
- (E) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (F) abuse of legal process;
- (G) financial irresponsibility;
- (H) neglect of professional obligations;
- (I) violation of an order of a court;
- (J) evidence of mental or emotional instability;

Under the 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.

(K) evidence of drug or alcohol dependency;

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

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

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

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

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

(A) age at the time of the conduct;

(B) recency of the conduct;

(C) reliability of the information concerning the conduct;

(D) seriousness of the conduct;

- (E) factors underlying the conduct;
- (F) cumulative effect of the conduct or information;
- (G) evidence of rehabilitation;
- (H) positive social contributions since the conduct;
- (I) candor in the discipline and reinstatement processes; and
- (J) materiality of any omissions or misrepresentations.

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

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

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

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

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

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

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

(G) positive action showing rehabilitation by such things as a person's community or civic service. Community or civic service is donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions.

The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for admission to the bar because service to

one's community is an essential obligation of members of the bar.

(4) *Educational Requirements.*

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

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

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

(B) A petitioner who has been ineligible to practice for 5 years or more will not be reinstated under this rule until the petitioner has re-taken and provided proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portions of the

Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE). A petitioner must have proof of passing all these required portions of the bar examination before that petitioner may file a petition for reinstatement under this subdivision.

(g) Hearing; Notice; Evidence.

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

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

(3) *Failure of Petitioner to be Examined.* ~~For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the~~The referee will dismiss the petition for reinstatement if the petitioner

fails to submit to examination as a witness under the notice given, unless good cause is shown for the failure.

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

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

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

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

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

Supreme Court of Florida. Proof may include certification by the Florida Board of Bar Examiners of ~~the~~ successful completion of an examination for admission to The Florida Bar ~~subsequent to~~after the date of the suspension or incapacity.

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

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

(1) *Availability.* Petitions for reinstatement under this rule are available to members placed on the inactive list for incapacity not related to misconduct and suspended members of the bar when the disciplinary judgment conditions their reinstatement on a showing of compliance with specified conditions.

(2) *Style of Petition.* Petitions must be styled in the Supreme Court of Florida and filed with the Supreme Court of Florida in accordance with the court's filing requirements, including e-filing requirements where applicable. A copy must be served on staff counsel, ~~The~~

Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 at the bar's headquarters address in Tallahassee.

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

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

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

(C) the names and addresses of all complaining witnesses in any disciplinary proceedings that resulted in suspension; and the name and address of the referee or judge who heard these disciplinary proceedings or of the trial judge, complaining

witnesses, and prosecuting lawyer, if suspension was based on conviction of a felony or misdemeanor involving moral turpitude;

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

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

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

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

(H) a statement of restitution made for any and all obligations to all former clients and the Florida Bar

Clients' Security Fund and the source and amount of funds used for this purpose;

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

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

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

(L) a statement as to whether any fraud charges of ~~fraud~~ were made or claimed against the petitioner during the period of suspension, whether formal or informal, together with the dates and names and addresses of persons making these charges;

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

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

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

(4) *Comments on Petition.* On the appointment of a referee and bar counsel, copies of the petition will be furnished by the bar counsel to local board members, local grievance committees, and to other persons

mentioned in this rule. Persons or groups that wish to respond must direct their comments to bar counsel. The proceedings and finding of the referee will relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of the proposed reinstatement on the administration of justice and purity of the courts and confidence of the public in the profession.

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

(m) Costs.

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

- (A) investigative costs, including travel and out-of-pocket expenses;
- (B) court reporters' fees;
- (C) copy costs;
- (D) telephone charges;
- (E) fees for translation services;

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

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

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

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

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

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

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

(n) Readmission; Applicability. A former member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted may be admitted again only upon full compliance with the rules and regulations governing admission to the bar. No application for readmission following disbarment, disbarment on consent, or disciplinary resignation or revocation may be tendered until ~~such time as~~ all restitution and disciplinary costs ~~as may have been~~ ordered or assessed have been paid, together with any interest accrued.

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

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

granting the disciplinary resignation or revocation have been complied with.

Comment

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

Court decisions dealing with reinstatements and other discipline provide further guidance as to what specific actions meet the test of community service. The court approved dismissal of a petition for reinstatement where the respondent had no community service and had devoted all her time during suspension to raising her young children. *Fla. Bar v. Tauler*, 837 So. 2d 413 (Fla. 2003). In a more

| | |
|---|--|
| <p>recent decision, the court did not specifically mention lack of community service in denying reinstatement, but the respondent had shown no evidence of work for others outside his family in his petition. Respondent's community service consisted solely of taking care of his elderly parents and his small child. <i>Fla. Bar v. Juan Baraque</i>, 43 So. 3d 691 (Fla. 2010).</p> | |
|---|--|