

CHAPTER 3. RULES OF DISCIPLINE
3-1. PREAMBLE
RULE 3-1.1 PRIVILEGE TO PRACTICE

A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-1.2 GENERALLY

The Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, to determine what constitutes grounds for discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

No history provided as of 1/1/10.

3-2. DEFINITIONS
RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms have the meaning set forth below unless their use clearly indicates a different meaning.

(a) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(b) The Board or the Board of Governors. The board or the board of governors is the board of governors of The Florida Bar.

(c) Chief Branch Discipline Counsel. Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.

(d) Complainant or Complaining Witness. A complainant or any complaining witness is any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(e) This Court or the Court. This court or the court is the Supreme Court of Florida.

(f) Court of this State. Court of this state is a state court authorized and established by the constitution or laws of the state of Florida.

(g) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned with respect to a particular grievance committee or matter. The designated reviewer for a special grievance committee will be selected by the president and approved by the board.

(h) Diversion to Practice and Professionalism Enhancement Programs. Diversion to practice and professionalism enhancement programs is removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

(i) Executive Committee. Executive committee is the executive committee of the board of governors of The Florida Bar.

(j) Executive Director. Executive Director is the executive director of The Florida Bar.

(k) Final Adjudication. Final adjudication is a decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

(l) Inquiry. Inquiry is a written communication received by bar counsel questioning the conduct of a member of The Florida Bar.

(m) Practice and Professionalism Enhancement Programs.

Practice and professionalism enhancement programs are programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

(n) Probable Cause. Probable cause is a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(o) Referral to Practice and Professionalism Enhancement Programs. Referral to practice and professionalism enhancement programs is placement of a lawyer in skills enhancement programs as a disciplinary sanction.

(p) Referee. Referee is a judge or retired judge appointed to conduct proceedings as provided under these rules.

(q) Respondent. Respondent is a member of The Florida Bar or a lawyer subject to these rules who is accused of misconduct or whose conduct is under investigation.

(r) Staff Counsel. Staff counsel is a lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); April 25, 2002 (820 So.2d 210). Amended May 19, 2005 to be effective Jan. 1, 2006; emergency motion filed and order issued changing effective date to Sept 14, 2005 due to Hurricane Katrina; on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206); December 20, 2007, effective March 1, 2008 (SC06-736); amended November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010; amended November 9, 2017, effective February 1, 2018 (234 So. 3d 577); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

3-3. JURISDICTION TO ENFORCE RULES
RULE 3-3.1 SUPREME COURT OF FLORIDA; DISCIPLINARY
AGENCIES

The exclusive jurisdiction of the Supreme Court of Florida over the discipline of persons admitted to the practice of law will be administered in the following manner subject to the supervision and review of the court. The following entities are designated as agencies of the Supreme Court of Florida for this purpose with the following responsibilities, jurisdiction, and powers. The board of governors, grievance committees, and referees have the jurisdiction and powers necessary to conduct the proper and speedy disposition of any investigation or cause, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Each member of these agencies has the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the agency.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-3.2 BOARD OF GOVERNORS OF THE FLORIDA BAR

(a) Responsibility of Board. The board is assigned the responsibility of maintaining high ethical standards among the members of The Florida Bar. The board will supervise and conduct disciplinary proceedings in accordance with the provisions of these rules.

(b) Authority to File a Formal Complaint. No formal complaint may be filed by The Florida Bar in disciplinary proceedings against a member of the bar unless 1 of the following conditions has been met:

(1) *Finding of Probable Cause.* A formal complaint may be filed if there has been a finding under these rules that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action;

(2) *Emergency Suspension or Probation.* A formal complaint may be filed if the member is the subject of an order of emergency suspension or emergency probation that is based on the same misconduct that is the subject matter of the formal complaint;

(3) *Felony Determination or Adjudication.* A formal complaint may be filed if the respondent has been determined or adjudged to be guilty of the commission of a felony;

(4) *Discipline In Another Jurisdiction.* A formal complaint may be filed if the respondent has been disciplined by another entity having jurisdiction over the practice of law;

(5) *Felony Charges.* A formal complaint may be filed if a member has been charged with commission of a felony under applicable law that warrants the imposition of discipline and if the chair of the grievance committee agrees. A decision of the grievance committee chair to not file a formal complaint must be reviewed by the full grievance committee. The grievance committee may affirm or reverse the decision.

(6) *Discipline on Action of the Florida Judicial Qualifications Commission.* A formal complaint may be filed if the Supreme Court of Florida has adjudged the respondent guilty of judicial misconduct in an action brought by the Florida Judicial Qualifications Commission, the respondent is no longer a judicial officer, and the facts warrant imposing disciplinary sanctions.

(c) Executive Committee. All acts and discretion required by the board under these Rules of Discipline may be exercised by its executive committee between meetings of the board as may from time to time be authorized by standing board of governors' policies.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended November 19, 2010, effective February 1, 2010 (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-3.3 COUNSEL FOR THE FLORIDA BAR

(a) Authority of Board of Governors. The board may employ staff counsel and bar counsel for The Florida Bar to perform such duties, as may be assigned, under the direction of the executive director.

(b) Appointment of Bar Counsel. Staff counsel may designate members of The Florida Bar to serve as bar counsel to represent The Florida Bar in disciplinary proceedings.

(c) Appointment of Board Members Limited. A member of the board may represent The Florida Bar on any review proceeding under rule 3-7.7.

(d) Appointment of Grievance Committee Members Limited. A member of a grievance committee may represent the bar in any proceeding before a referee and any review by the supreme court under rule 3-7.7 if the case was not considered by the grievance committee on which the member serves.

(e) Compensation. Bar counsel may be compensated in accordance with budgetary policies adopted by the board.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); amended November 19, 2009, effective February 1, 2010 (24 So.3d 63)(34 Fla.L.Weekly S628a).

RULE 3-3.4 GRIEVANCE COMMITTEES

The board will appoint grievance committees as provided in this rule. Each grievance committee has the authority and jurisdiction required to perform the functions assigned to it, which are as follows:

(a) Circuit Grievance Committees. The board will appoint at least 1 grievance committee for each judicial circuit of this state and as many more as the board chooses. These committees will be designated as judicial circuit grievance committees, and in circuits having more than 1 committee they will be identified by alphabetical designation in the order of creation. These committees

will be continuing bodies notwithstanding changes in membership, and they will have jurisdiction and the power to proceed in all matters properly before them.

(b) Special Grievance Committees. The board may appoint grievance committees for the purpose of investigations or specific tasks assigned in accordance with these rules. These committees will continue only until the completion of tasks assigned, and they will have jurisdiction and power to proceed in all matters assigned to them. All provisions concerning grievance committees apply to special grievance committees except those concerning terms of office and other restrictions imposed by the board. Any vacancies occurring in such a committee will be filled by the board, and any changes in members will not affect the jurisdiction and power of the committee to proceed in all matters properly before it.

(c) Membership, Appointment, and Eligibility. Each grievance committee will be appointed by the board and must have at least 3 members. At least one-third of the committee members must be nonlawyers. All appointees must be of legal age and, except for special grievance committees, must be residents of the circuit or have their principal office in the circuit. The lawyer members of the committee must have been members of The Florida Bar for at least 5 years.

A member of a grievance committee must not perform any grievance committee function when that member:

(1) is related by blood or marriage to the complainant or respondent;

(2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;

(3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or

(4) is prejudiced or biased toward either the complainant or the respondent.

On notice of the above prohibitions, the affected members should recuse themselves from further proceedings. The grievance committee chair has the power to disqualify any member from any proceeding in which any of the above prohibitions exist and are stated orally on the record or memorialized in writing by the chair.

(d) Terms. The terms of the members are for 1 year from the date of administration of the oath of service on the grievance committee or until their successors are appointed and qualified. Continuous service of a member may not exceed 3 years. A member may not be reappointed for a period of 3 years after the end of the member's term; but, the expiration of a member's term of service does not disqualify the member from concluding any investigation or participating in disposition of cases that were pending before the committee when the member's term expired. A member who continues to serve on the grievance committee under the authority of this subdivision is not counted as a member of the committee when calculating the minimum number of public members required by this rule.

(e) Officers. The designated reviewer of the committee will designate a chair and vice-chair who must be members of The Florida Bar.

(f) Oath. Each new member of a committee must subscribe to an oath to fulfill the duties of the office. These oaths will be filed with the executive director and placed with the official records of The Florida Bar.

(g) Removal. The designated reviewer of a grievance committee or the board of governors may remove any member of a grievance committee from office.

(h) Grievance Committee Meetings. Grievance committees should meet at regularly scheduled times, at least once every 3 months, and either the chair or vice-chair may call special meetings. Grievance committees should meet at least monthly during any period when the committee has 1 or more pending cases assigned for investigation and report. The time, date, and place of

regular monthly meetings should be set in advance by agreement between the committee and chief branch discipline counsel.

Amended June 8, 1989 (544 So.2d 193); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-3.5 CIRCUIT COURT JURISDICTION

The jurisdiction of the circuit courts is concurrent with that of The Florida Bar under these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter retains jurisdiction to the exclusion of the other forum until the final determination of the cause.

No history provided as of 1/1/10, amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

3-4. STANDARDS OF CONDUCT

RULE 3-4.1 NOTICE AND KNOWLEDGE OF RULES; JURISDICTION OVER LAWYERS OF OTHER STATES AND FOREIGN COUNTRIES

Every member of The Florida Bar and every lawyer of another state or foreign country who provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies under this rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this court. Jurisdiction over a lawyer of another state who is not a member of The Florida Bar is limited to conduct as a lawyer in relation to the business for which the lawyer was permitted to practice in this state and the privilege in the future to practice law in the state of Florida. When The Florida Bar disciplines a lawyer that the bar is aware has bar membership in a European Union (E.U.) nation, the bar will notify the appropriate E.U. representative. The bar will use forms adopted by the Council

of Laws and Bar Societies of Europe (CCBE) and the Conference of Chief Justices of the United States.

January 1, 2006; due to Hurricane Katrina, emergency motion was filed and court issued opinion changing effective date to Sept 14, 2005; amended May 29, 2014, effective June 1, 2014 (140 So.3d 541).

RULE 3-4.2 RULES OF PROFESSIONAL CONDUCT

Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.

No history provided in West Law as of 1/1/10.

RULE 3-4.3 MISCONDUCT AND MINOR MISCONDUCT

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-4.4 CRIMINAL MISCONDUCT

A determination or judgment by a court of competent jurisdiction that a member of The Florida Bar is guilty of any crime or offense that is a felony under the laws of that court's jurisdiction is cause for automatic suspension from the practice of law in Florida, unless the judgment or order is modified or stayed by the Supreme Court of Florida, as provided in these rules. The Florida

Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for an alleged criminal misdemeanor or felony offense. The board may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the respondent. If a respondent is acquitted in a criminal proceeding that acquittal is not a bar to disciplinary proceedings. Likewise, the findings, judgment, or decree of any court in civil proceedings is not necessarily binding in disciplinary proceedings.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-4.5 REMOVAL FROM JUDICIAL OFFICE BY THE SUPREME COURT OF FLORIDA

Whenever a judge is removed from office by the Supreme Court of Florida on the basis of a Judicial Qualifications Commission proceeding, the removal order, when the record in such proceedings discloses the appropriate basis, may also order the suspension of the judge as an attorney pending further proceedings hereunder.

When the Judicial Qualifications Commission files a recommendation that a judge be removed from office, The Florida Bar may seek leave to intervene in the proceedings before the Supreme Court of Florida. If intervention is granted, The Florida Bar may seek disciplinary action in the event the judge is removed by the court.

Amended March 23, 2000 (763 So.2d 1002).

RULE 3-4.6 DISCIPLINE BY FOREIGN OR FEDERAL JURISDICTION; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. A final

adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that a lawyer licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action will be considered as conclusive proof of the misconduct in a disciplinary proceeding under this rule.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied are as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction will be applied to the conduct.

Amended May 12, 2005, effective Jan. 1, 2006; due to Hurricane Katrina, emergency motion was filed and court issued opinion changing effective date to Sept 14, 200; amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-4.7 OATH

Violation of the oath taken by a lawyer to support the constitutions of the United States and the state of Florida is ground for disciplinary action. Membership in, alliance with, or support of any organization, group, or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state is a violation of the oath.

No history provided in West Law as of 1/1/10; amended November 9, 2017, effective February 1, 2018 (234 So.3d 632)

RULE 3-4.8 CONSENT AGREEMENTS

The Supreme Court of Florida may admit a person to membership in The Florida Bar under a consent agreement as provided in the Rules Relating to Admissions to the Bar. The consent agreement will be monitored by The Florida Bar. The Supreme Court of Florida, unless otherwise required by law, will require that the member admitted under the consent agreement pay monitoring costs. A failure to observe the conditions of the consent agreement or a finding of probable cause as to conduct of the member committed during the period of the consent agreement may terminate the agreement and subject the member to all available disciplinary sanctions. Proceedings to determine compliance with conditions of admission will be processed in the same manner as matters of contempt provided elsewhere in these Rules Regulating the Florida Bar.

Added September 3, 2020 (301 So.3d 857).

3-5. TYPES OF DISCIPLINE

RULE 3-5.1 GENERALLY

A judgment finding a member of The Florida Bar guilty of misconduct will include 1 or more of the following disciplinary measures.

(a) Admonishments. A Supreme Court of Florida order finding minor misconduct and ordering an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, a grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, on review of the report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment will be made a part of the record of the proceeding after the admonishment is administered.

(b) Minor Misconduct. Minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction.

(1) *Criteria.* In the absence of unusual circumstances misconduct will not be regarded as minor if any of the following conditions exist:

(A) the misconduct involves misappropriation of a client's funds or property;

(B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;

(C) the misconduct resulted in or is likely to result in actual or potential injury to the public or the legal system;

(D) the respondent has been publicly disciplined in the past 3 years;

(E) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;

(F) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or

(G) the misconduct constitutes the commission of a felony under applicable law.

(2) *Discretion of Grievance Committee.* A grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present, despite the presence of 1 or more of the criteria described in subdivision (1) of this rule. Any grievance committee report recommending an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program despite the presence of the criteria in subdivision (1) must contain a detailed

explanation of the circumstances giving rise to the committee's recommendation.

(3) *Recommendation of Minor Misconduct.* If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of \$1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the disciplinary review committee by the designated reviewer as provided elsewhere in these rules, the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within 30 days after service of the report. If rejected by the respondent, bar counsel will prepare a formal complaint as in a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct will be given, in writing, to the complainant.

(4) *Rejection of Minor Misconduct Reports.* The board of governors' rejection of a grievance committee report of minor misconduct, without dismissal of the case or remand to the grievance committee, is deemed a finding of probable cause. The respondent's rejection is deemed a finding of probable cause. At trial before a referee following a respondent's rejection of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct.* A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 30 days after service of a notice of a finding of probable cause by a grievance committee or the board of governors. An admission of minor misconduct may be conditioned on acceptance by the grievance committee or the board of governors, but the respondent may not condition the admission of minor misconduct on the method of administration of the

admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance committee or board of governors may consider the admission without further evidentiary hearing and may either reject the admission, affirming its prior action, or accept the admission, in which case, the report of minor misconduct will be issued by the grievance committee. If a respondent's admission is accepted by the grievance committee or board of governors, the respondent may not later reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, the admission may not be considered or used against the respondent in subsequent proceedings.

(c) Probation. The respondent may be placed on probation for a stated period of time between 6 months and 5 years or for an indefinite period determined by conditions stated in the order. The judgment will state the conditions of the probation, which may include, but are not limited to, the following:

- (1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;
- (2) supervision of all or part of the respondent's work by a member of The Florida Bar;
- (3) required reporting to a designated agency;
- (4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;
- (5) supervision over fees and trust accounts as the court directs; or
- (6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. The respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar, on failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

(d) Public Reprimand. A public reprimand will be administered in the manner prescribed in the judgment but all reprimands will be reported in the Southern Reporter. The bar will provide due notice to the respondent of any proceeding set to administer the reprimand. The respondent must appear personally before the Supreme Court of Florida, the board of governors, any judge designated to administer the reprimand, or the referee, if required, and this appearance will be made a part of the record of the proceeding.

(e) Suspension. The respondent may be suspended from the practice of law for a period of time to be determined by the conditions imposed by the judgment or order or until further order of the court. During this suspension, the respondent continues to be a member of The Florida Bar but without the privilege of practicing. A suspension of 90 days or less does not require proof of rehabilitation or passage of the Florida bar examination, and the respondent will become eligible for all privileges of members of The Florida Bar on the expiration of the period of suspension. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the Florida bar examination and the respondent will not become eligible for all privileges of members of The Florida Bar until the court enters an order reinstating the respondent to membership in The Florida Bar. No suspension will be ordered for a specific period of time more than 3 years.

An order or opinion imposing a suspension of 90 days or less will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until

the end of the term of the suspension and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

An order or opinion imposing a suspension of more than 90 days will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the date of the court's order of reinstatement and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

(f) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the bar. Permanent disbarment precludes readmission. A former member who has not been permanently disbarred may only be admitted again on full compliance with the rules and regulations governing admission to the bar. Except as otherwise provided in these rules, no application for readmission may be tendered within 5 years after the date of disbarment or a longer period ordered by the court in the disbarment order or at any time after that date until all court-ordered restitution and outstanding disciplinary costs have been paid.

Disbarment is the presumed sanction for lawyers found guilty of theft from a lawyer's trust account or special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or trustee. A respondent found guilty of theft will have the opportunity to offer competent, substantial evidence to rebut the presumption that disbarment is appropriate.

Unless waived or modified by the court on motion of the respondent, an order or opinion imposing disbarment will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion and will provide that the disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients.

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or another period of time in excess of 5 years contained in that order.

(h) Notice to Clients. Unless the court orders otherwise, when the respondent is served with an order of disbarment, disbarment on consent, disciplinary revocation, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent must immediately furnish a copy of the order to all:

- (1) clients of the respondent with matters pending in the respondent's practice;
- (2) opposing counsel or co-counsel in the matters listed in (1), above;
- (3) courts, tribunals, or adjudicative agencies before which the respondent is counsel of record; and
- (4) state, federal, or administrative bars of which respondent is a member.

Within 30 days after service of the order the respondent must furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

(i) Forfeiture of Fees. An order of the Supreme Court of Florida or a report of minor misconduct adjudicating a respondent guilty of entering into, charging, or collecting a fee prohibited by the Rules Regulating The Florida Bar may order the respondent to forfeit all or any part of the fee. In the case of a clearly excessive fee, the excessive amount of the fee may be ordered returned to the client, and a fee otherwise prohibited by the Rules Regulating The Florida Bar may be ordered forfeited to The Florida Bar Clients' Security Fund and disbursed in accordance with its rules and regulations.

(j) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee, or that the respondent has converted trust funds or property. The amount of restitution will be specifically set forth in the disciplinary order or agreement. Restitution for an excessive fee will not exceed the amount by which that fee is clearly excessive. Restitution for a prohibited or illegal fee will not exceed the amount of the fee. Restitution for a conversion will not exceed the amount of the conversion established in disciplinary proceedings. The disciplinary order or agreement must state to whom restitution must be made and the date by which it must be completed. Failure to comply with the order or agreement will cause the respondent to become a delinquent member and will not preclude further proceedings under these rules. The respondent must provide the bar with telephone numbers and current addresses of all individuals or entities to whom the respondent is ordered to pay restitution.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451); Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206) (916 So.2d 655; March 22, 2007, effective June 1, 2007 (SC06-1840) (952 So.2d 1185); December 20, 2007, effective March 1, 2008

(978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412) ; amended September 7, 2023, effective November 6, 2023 (SC22-1293).

**RULE 3-5.2 EMERGENCY SUSPENSION; AND INTERIM
PROBATION; INTERIM PLACEMENT ON THE INACTIVE LIST
FOR INCAPACITY NOT RELATED TO MISCONDUCT; AND
FREEZING TRUST ACCOUNTS**

(a) Emergency Suspension.

(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. The fact that a lawyer has been charged with a felony by an indictment or information in state or federal court may, for the purposes of this rule, constitute clear and convincing evidence that the lawyer's continued practice of law would cause great public harm when such felony charge alleges conduct reflecting adversely on the lawyer's fitness to practice law.

(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 certified copy of an order of a foreign disciplinary jurisdiction suspending or disbaring a lawyer from the practice of law.

(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.

(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, 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 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 in an electronic format approved by the supreme court

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 in an electronic format approved by the supreme court 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) Petition for Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct.

(1) *Petition.* The Supreme Court of Florida may issue an order placing a lawyer on interim probation, under the conditions provided in rule 3-5.1 or placing the lawyer on the inactive list for incapacity not related to misconduct as provided elsewhere in this chapter 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.* 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.

(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 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 in an electronic format approved by the supreme court 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) Trust Accounts.

(1) *Effect of Order Restricting Lawyer Trust Account.* Any order of emergency suspension, interim probation, or interim placement on the inactive list that restricts the 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 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.

(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.

(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 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.

(4) *Notice by Bar.* The bar will provide information to the appointed referee from bar audits and other existing information

regarding persons claiming 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) *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) *Summary Proceedings.* 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.

(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 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.

(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 a separate segregated individual trust account under the individual client's tax identification number.

(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.

(d) 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 and interim probation. The chief justice will schedule oral argument as soon as practicable, if granted.

(e) 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.

Former Rule 3-5.1(g) redesignated as new Rule 3-5.2 and amended Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); amended June 29, 2006, effective August 1, 2006 (SC05-1684) (933 So.2d 498); amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended

June 11, 2015, effective October 1, 2015 (167 So.3d 412); amended March 3, 2022, effective May 2, 2022 (SC20-1467); amended August 31, 2023, effective October 30, 2023 (SC23-108) ; amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS

(a) Authority of Board. The board of governors is authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction.

(b) Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a finding of minor misconduct or by a finding of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs.

(c) Limitation on Diversion. A respondent who has been the subject of a prior diversion is not eligible for diversion for the same type of rule violation for a period of 5 years after the earlier diversion. A respondent who has been the subject of a prior diversion and then is alleged to have violated a completely different type of rule at least 1 year after the initial diversion will be eligible for a practice and professionalism enhancement program.

(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar will not offer a respondent the opportunity to divert a disciplinary case that is pending at staff or grievance committee level investigations to a practice and professionalism enhancement program unless staff counsel, the grievance committee chair, and the designated reviewer concur.

(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation must state the practice and professionalism enhancement program(s) to which the respondent will be diverted,

the general purpose for the diversion, and the costs to be paid by the respondent.

(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the bar must serve the recommendation on the respondent who may accept or reject a diversion recommendation in the same manner as provided for review of recommendations of minor misconduct. The respondent does not have the right to reject any specific requirement of a practice and professionalism enhancement program.

(g) Effect of Rejection of Recommendation by Respondent. If a respondent rejects a diversion recommendation the matter will be returned for further proceedings under these rules.

(h) Diversion Before Formal Complaint is Filed. The procedures for approval of consent judgments provided elsewhere in these rules apply to diversion before the filing of a formal complaint.

(i) Diversion at Trial Level.

(1) *Agreement of the Parties.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional pleas provided elsewhere in these rules apply to diversion at the trial level.

(2) *After Submission of Evidence.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of guilt, the referee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than minor misconduct.

(3) *Costs of Practice and Professionalism Enhancement Program.* A referee's recommendation of diversion to a practice and professionalism enhancement program must state the costs to be paid by the respondent.

(4) *Appeal of Diversion Recommendation.* The respondent and the bar have the right to appeal a referee's recommendation of diversion, except for a diversion agreed to under subdivision (i)(1).

(5) *Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program.* Nothing in this rule precludes a referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

(j) Effect of Diversion. When the recommendation of diversion becomes final, the respondent must enter the practice and professionalism enhancement program(s) and complete their requirements. The bar will terminate its investigation into the matter and close its disciplinary files indicating the diversion on a respondent's entry into a practice and professionalism enhancement program. Diversion into the practice and professionalism enhancement program is not a disciplinary sanction.

(k) Effect of Completion of the Practice and Professionalism Enhancement Program. The bar's file will remain closed if a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent is diverted.

(l) Effect of Failure to Complete the Practice and Professionalism Enhancement Program. The bar may reopen its disciplinary file and conduct further proceedings under these rules if a respondent fails to complete all requirements of the practice and professionalism enhancements program(s) to which the respondent is diverted, including payment of associated costs. Failure to complete the practice and professionalism enhancement program is an aggravating factor when imposing a disciplinary sanction.

(m) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar will annually determine the costs of practice and professionalism enhancement programs and publish the amount of the costs to be assessed against and paid by a respondent.

Comment

As to subdivision (c) of 3-5.3, a lawyer who agreed to attend the Advertising Workshop in 1 year would not be eligible for diversion for an advertising violation for a period of 5 years following the first diversion. However, that same lawyer would be eligible to attend the Advertising Workshop 1 year and then attend a Trust Account Workshop for a completely different violation 1 year after the first diversion is completed.

Added Oct. 20, 1994 (644 So.2d 282). Amended April 25, 2002 (820 So.2d 210); May 20, 2004, (SC03-705) (875 So.2d 448). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412) ; amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-5.4 PUBLICATION OF DISCIPLINE

(a) Nature of Sanctions. All disciplinary sanctions, as defined in rules 3-5.1 and 3-5.2, or their predecessors, of these Rules Regulating The Florida Bar in disciplinary cases opened after March 16, 1990 are public information. Admonishments for minor misconduct entered in disciplinary cases opened on or before March 16, 1990 are confidential.

(b) Disclosure on Inquiry. All public disciplinary sanctions will be disclosed on inquiry.

(c) Manner of Publication. Unless otherwise directed by the court, and subject to the exceptions set forth below, all public disciplinary sanctions may be published for public information in print or electronic media.

(d) Limited Exception for Admonishments Issued by the Supreme Court of Florida. All admonishments issued by the court containing the heading “Not to be Published” will not be published in the official court reporter and will not be published in *The Florida Bar News*.

“Not to be Published” does not have the same meaning as “confidential.” The Florida Bar may post information regarding specific orders of admonishment on the bar’s website. Further, The

Florida Bar may provide information regarding an admonishment on inquiry.

Comment

All disciplinary sanctions as defined in rules 3-5.1 and 3-5.2, or their predecessors, entered in cases opened on or after March 17, 1990 are public information. Therefore, an inquiry into the conduct of a member of the bar will result in a disclosure of all these sanctions.

The public policy of this state is to provide reasonable means of access to public information. In furtherance of this policy, this rule is enacted so that all persons may understand what public information concerning lawyer disciplinary sanctions is available and in what format. This rule does not alter current court procedure or other requirements.

Admonishments are issued for minor misconduct and are the lowest form of disciplinary sanction. An admonishment is often issued for technical rule violations or for rule violations that did not result in harm. The court's orders imposing admonishments contain the heading "Not to be Published" and this rule directs that those admonishments not be published in Southern Reporter and directs The Florida Bar not to publish those admonishments in its newspaper, *The Florida Bar News*. The court does so in order to maintain a tangible difference between the sanctions of admonishment and public reprimand.

This rule does not bar disclosure of admonishments in response to an inquiry, whether written, oral, or electronic, and does not bar publication of admonishments on any website of The Florida Bar.

New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (24 So.3d 63), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

**3-6. EMPLOYMENT OF CERTAIN LAWYERS OR FORMER
LAWYERS
RULE 3-6.1 GENERALLY**

(a) Authorization and Application. Except as limited in this rule, persons or entities providing legal services may employ certain lawyers or former lawyers to perform those services that may ethically be performed by nonlawyers employed by authorized business entities. For purposes of this rule:

(1) these lawyers and former lawyers are referred to as “individual(s) subject to this rule”;

(2) “individuals subject to this rule” includes lawyers who are on the inactive list due to incapacity or who are suspended or have been disbarred by a court or other authorized disciplinary agency of this or another jurisdiction;

(3) the term “disbarred” includes disciplinary resignation and revocation, permanent retirement in lieu of discipline, or their substantial equivalents; and

(4) An individual subject to this rule is considered employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor, or is engaged to provide services to the client arising from or related to the client’s legal representation at the recommendation of the entity or any of its members or employees.

(b) Employment by Former Subordinates Prohibited. An individual subject to this rule may not be employed or supervised by a lawyer whom the individual subject to this rule employed or supervised before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation order.

(c) Notice of Employment Required. The lawyer or entity employing any individual who will be subject to this rule must provide The Florida Bar with a notice of employment and a detailed description of the intended services to be provided by the individual subject to this rule before employment starts.

(d) Prohibited Conduct.

(1) *Client Contact.* Individuals subject to this rule must not have contact (including engaging in communication in any manner) with any client.

(2) *Trust Funds or Property.* Individuals subject to this rule must not receive, disburse, or otherwise handle trust funds or property as defined in chapter 5 of these rules. Individuals subject to this rule must not act as fiduciaries for any funds or property of their clients or former clients, their employers' clients or former clients, or the clients or former clients of any entity in which an employer is a beneficial owner.

(3) *Practice of Law.* Individuals subject to this rule must not engage in conduct that constitutes the practice of law and must not hold themselves out as being eligible to do so.

(e) Quarterly Reports by Individual and Employer Required. The individual subject to this rule and employer must submit sworn information reports to The Florida Bar. These reports must be filed quarterly, based on the calendar year, and include statements that no aspect of the work of the individual subject to this rule has involved the unlicensed practice of law, that the individual subject to this rule has had no client contact, that the individual subject to this rule did not receive, disburse, or otherwise handle trust funds or property, and that the individual subject to this rule is not being supervised by a lawyer whom the individual subject to this rule supervised before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation order.

(f) Supervising Lawyer. An individual subject to this rule must be supervised by a member of The Florida Bar in good standing and eligible to practice law in Florida who is employed full-time by the entity that employs the individual subject to this rule and is actively engaged in the supervision of the individual subject to this rule in all aspects of the individual's employment.

Comment

Trust funds are defined in chapter 5 of these rules and include, but are not limited to, funds held in trust for clients or third parties in connection with legal representation in escrow, estate, probate, trustee, and guardianship accounts. The Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties with an interest in the escrowed funds whether held in the lawyer's trust account or a separate escrow or fiduciary account. See *Fla. Bar v. Marrero*, 157 So. 3d 1020 (Fla. 2015); *Fla. Bar v. Hines*, 39 So. 3d 1196 (Fla. 2010). Individuals subject to this rule are prohibited from receiving, disbursing, or handling trust funds or property or acting as a fiduciary regarding funds or property of the current or former clients of these individuals, the entities employing them, or any other entity in which the employer is a beneficial owner.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (SC03-705), (875 So.2d 448), corrected opinion issued July 7, 2004; October 6, 2005, effective Jan. 1 2006 (SC05-206), (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (140 So.3d 541); amended May 28, 2020, effective July 27, 2020; amended March 3, 2022, effective May 2, 2022 (SC20-1467); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

3-7. PROCEDURES **RULE 3-7.1 CONFIDENTIALITY**

(a) Scope of Confidentiality. All records including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those disciplinary matters conducted in circuit courts, are property of The Florida Bar. All of those matters are confidential and will not be disclosed except as provided in these rules. When disclosure is permitted under these rules, it will be limited to information concerning the status of the proceedings

and any information that is part of the public record as defined in these rules.

Unless otherwise ordered by this court or the referee in proceedings under these rules, nothing in these rules prohibits the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules, or from disclosing any documents or correspondence served on or provided to those persons except where disclosure is prohibited in chapter 4 of these rules or by statutes and caselaw regarding attorney-client privilege.

(1) *Pending Investigations.* Disciplinary matters pending at the initial investigatory and grievance committee levels are treated as confidential by The Florida Bar, except as provided in rules 3-7.1(e) and (k).

(2) *Minor Misconduct Cases.* Any case that has been concluded by a finding of minor misconduct is public information.

(3) *Probable Cause Cases.* Any disciplinary case that has a finding of probable cause for further disciplinary proceedings is public information. Cases in which a formal complaint has been filed under rule 3-3.2(b) without a finding of probable cause are public on filing the complaint.

(4) *No Probable Cause Cases.* Any disciplinary case that has been concluded by a finding of no probable cause for further disciplinary proceedings is public information.

(5) *Diversion or Referral to Grievance Mediation and Fee Arbitration Program.* Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation and fee arbitration program is public information.

(6) *Contempt Cases.* Contempt proceedings authorized elsewhere in these rules are public information even if the underlying disciplinary matter is confidential as defined in these rules.

(7) *Incapacity Not Involving Misconduct.* Proceedings for placement on the inactive list for incapacity not involving misconduct are public information on the filing of the petition with the Supreme Court of Florida.

(8) *Petition for Emergency Suspension or Probation.* Proceedings seeking a petition for emergency suspension or probation are public information.

(9) *Proceedings on Determination or Adjudication of Guilt of Criminal Misconduct.* Proceedings on determination or adjudication of guilt of criminal misconduct, as provided elsewhere in these rules, are public information.

(10) *Professional Misconduct in Foreign Jurisdiction.* Proceedings based on disciplinary sanctions entered by a foreign court or other authorized disciplinary agency, as provided elsewhere in these rules, are public information.

(11) *Reinstatement Proceedings.* Reinstatement proceedings, as provided elsewhere in these rules, are public information.

(12) *Disciplinary Resignations and Disciplinary Revocations.* Proceedings involving petitions for disciplinary resignation or for disciplinary revocation as provided elsewhere in these rules, are public information.

(b) Public Record. The public record consists of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, recordings, or transcripts of hearings furnished to, served on, or received from the respondent or the complainant.

(c) Circuit Court Proceedings. Proceedings under rule 3-3.5 are public information.

(d) Limitations on Disclosure. Any material provided to The Florida Bar that is confidential under applicable law will remain confidential and will not be disclosed except as authorized by the

applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida.

The procedure for maintaining the required confidentiality is set forth in subdivision (m) below.

(e) Response to Inquiry. Authorized representatives of The Florida Bar will respond to specific inquiries concerning matters that are in the public domain, but otherwise confidential under the rules, by acknowledging the status of the proceedings.

(f) Notice to Law Firms. When a disciplinary file is opened the respondent must disclose to the respondent's current law firm and, if different, the respondent's law firm at the time of the act or acts giving rise to the complaint, that a disciplinary file has been opened. Disclosure must be in writing and in the following form:

A complaint of unethical conduct against me has been filed with The Florida Bar. The nature of the allegations are _____. This notice is provided under rule 3-7.1(f) of the Rules Regulating The Florida Bar.

The notice must be provided within 15 days of notice that a disciplinary file has been opened and a copy of the above notice must be served on The Florida Bar.

(g) Production of Disciplinary Records Pursuant to Subpoena. The Florida Bar, under a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the public record, even if the disciplinary proceeding is confidential under these rules. The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(h) Notice to Judges. Any judge of a court of record, on inquiry of the judge, will be advised and, absent an inquiry, may be advised as to the status of a confidential disciplinary case and may be provided with a copy of documents in the file that would be part of the public record if the case was not confidential. The judge

must maintain the records' confidentiality and not otherwise disclose the status of the case.

(i) Evidence of Crime. The confidential nature of these proceedings does not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

(j) Chemical Dependency and Psychological Treatment. That a lawyer, judge, or justice has voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems is confidential and will not be admitted as evidence in disciplinary proceedings under these rules unless agreed to by the lawyer, judge, or justice who sought, received, or accepted the treatment.

For purposes of this subdivision, a lawyer, judge, or justice is deemed to have voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems if the lawyer, judge, or justice was not under compulsion of law or rule to do so, or if the treatment is not a part of conditional admission to The Florida Bar or of a disciplinary sanction imposed under these rules.

It is the purpose of this subdivision to encourage lawyers, judges, and justices to voluntarily seek advice, counsel, and treatment available to lawyers, judges, and justices, without fear that the fact it is sought or rendered will be admitted as evidence in disciplinary proceedings under these rules.

(k) Response to False or Misleading Statements. If public statements that are false or misleading are made about any otherwise confidential disciplinary case, The Florida Bar may disclose all information necessary to correct such false or misleading statements.

(l) Disclosure by Waiver of Respondent. On written waiver executed by a respondent, The Florida Bar may disclose the status of otherwise confidential disciplinary proceedings and provide copies of the public record to:

(1) the Florida Board of Bar Examiners or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of an applicant for admission to practice law in that jurisdiction; or

(2) Florida judicial nominating commissions or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of a candidate for judicial office; or

(3) The Florida Bar Board of Legal Specialization and Education and any of its certification committees for the purpose of evaluating the character and fitness of a candidate for board certification or recertification; or

(4) the governor of the State of Florida for the purpose of evaluating the character and fitness of a nominee to judicial office.

(m) Maintaining Confidentiality Required by Rule or Law.

The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Gen. Prac. & Jud. Admin. 2.420. It will be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that the documents or information contain material that is exempt from disclosure under applicable rule or law and request that exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

Amended Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971); March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004 (875 So.2d 448); October 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217); amended March 3, 2022, effective May 2, 2022 (SC20-1467); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

**RULE 3-7.2 PROCEDURES ON CRIMINAL OR PROFESSIONAL
MISCONDUCT; DISCIPLINE ON DETERMINATION OR
JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT; DISCIPLINE
ON REMOVAL FROM JUDICIAL OFFICE**

(a) Definitions.

(1) *Judgment of Guilt.* For the purposes of these rules, “judgment of guilt” includes only those cases in which the trial court in the criminal proceeding enters an order adjudicating the respondent guilty of the offense(s) charged.

(2) *Determination of Guilt.* For the purposes of these rules, “determination of guilt” includes those cases in which the trial court in the criminal proceeding enters an order withholding adjudication of the respondent’s guilt of the offense(s) charged, those cases in which the convicted lawyer has entered a plea of guilty to criminal charges, those cases in which the convicted lawyer has entered a no contest plea to criminal charges, those cases in which the jury has rendered a verdict of guilty of criminal charges, and those cases in which the trial judge in a bench trial has rendered a verdict of guilty of criminal charges.

(3) *Convicted Lawyer.* For the purposes of these rules, “convicted lawyer” means a lawyer who has had either a determination or judgment of guilt entered by the trial court in the criminal proceeding.

(b) Determination or Judgment of Guilt, Admissibility; Proof of Guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction on trial or plea to any crime under the laws of this state, or under the laws under which any other court making the determination or entering the judgment exercises its jurisdiction, is admissible in proceedings under these rules and is conclusive proof of guilt of the criminal offense(s) charged for the purposes of these rules.

(c) Notice of Institution of Felony Criminal Charges. Any member of The Florida Bar who is the subject of a felony criminal charge must notify the executive director of The Florida Bar of the

charges within 10 days of the filing of the indictment or information and include a copy of the indictment or information.

If the state attorney whose office is assigned to a felony criminal case is aware that the defendant is a member of The Florida Bar, the state attorney must provide a copy of the indictment or information to the executive director.

(d) Notice of Determination or Judgment of Guilt of Felony Charges.

(1) *Trial Judge.* The trial judge must provide a certified copy of the determination or judgment of guilt of a felony offense to the executive director of The Florida Bar within 10 days of its entry.

(2) *Clerk of Court.* The clerk of that court must provide a certified copy of the determination or judgment of guilt of a felony offense to the executive director within 10 days of its entry.

(3) *State Attorney.* The state attorney whose office is assigned that case must provide a copy of the documents evidencing the determination or judgment of guilt of a felony offense to the executive director if the state attorney is aware that the defendant is a member of The Florida Bar.

(e) Notice of Self-Reporting by Members of Determination or Judgment of Guilt of All Criminal Charges. A member of The Florida Bar must provide a copy of the document(s) entering a determination or judgment for any criminal offense against that member entered on or after August 1, 2006 to the executive director within 10 days of its entry.

(f) Suspension by Judgment of Guilt (Felonies). The Florida Bar will file a “Notice of Determination or Judgment of Guilt” or a consent judgment for disbarment or disciplinary revocation in the Supreme Court of Florida on receiving notice that a member of the bar has been determined to be or adjudicated guilty of a felony. A copy of the document(s) on which the determination or judgment is based must be attached to the notice. The respondent is suspended as a member of The Florida Bar as

defined in rule 3-5.1(e) on filing of the notice with the Supreme Court of Florida and service of the notice on the respondent.

(g) Petition to Modify or Terminate Suspension. The respondent may file a petition with the Supreme Court of Florida to modify or terminate suspension at any time after the filing of a notice of determination or judgment of guilt. The respondent must serve a copy of the petition on the executive director. The suspension imposed under the authority of this rule will not be stayed by filing a petition to modify or terminate suspension.

(h) Appointment of Referee. The Supreme Court of Florida will promptly appoint or direct the appointment of a referee on the entry of an order of suspension as provided above.

(1) *Hearing on Petition to Terminate or Modify Suspension.* The referee must hear a petition to terminate or modify a suspension imposed under this rule within 7 days of appointment 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 termination or modification of the suspension only if the suspended member can demonstrate that the member is not the convicted person or that the criminal offense is not a felony.

(2) *Hearing on Sanctions.* The referee may also hear argument concerning the appropriate sanction to be imposed and file a report and recommendation with the supreme court in the same manner and form as provided in rule 3-7.6(m) of these rules. The hearing must be held and a report and recommendation filed with the supreme court within 90 days of assignment as referee.

The respondent may challenge the imposition of a sanction only on the grounds of mistaken identity or whether the conduct involved constitutes a felony under applicable law. The respondent may present relevant character evidence and relevant matters of mitigation regarding the proper sanction to be imposed. The respondent cannot contest the findings of guilt in the criminal proceedings. A respondent who entered a plea in the criminal proceedings is allowed to explain the circumstances concerning the entry of the plea for purposes of mitigation.

The report and recommendations of the referee may be reviewed in the same manner as provided in rule 3-7.7 of these rules.

(i) Appeal of Conviction. The suspension will remain in effect during any appeal of the determination or judgment of guilt of a felony offense in the criminal proceeding. The suspension will remain in effect until the final disposition of the criminal cause if remanded for further proceedings and until the respondent's civil rights have been restored and the respondent has been reinstated unless modified or terminated by the Supreme Court of Florida as elsewhere provided.

(j) Expunction. The Supreme Court of Florida may expunge a sanction entered under this rule when a final disposition of the criminal cause has resulted in acquittal or dismissal on motion of the respondent. A respondent who is the subject of a sanction that is expunged under this rule may lawfully deny or fail to acknowledge the sanction, except when the respondent is a candidate for election or appointment to judicial office, or as otherwise required by law.

(k) Waiver of Time Limits. The respondent may waive the time requirements set forth in this rule by written request made to and approved by the referee or supreme court.

(l) Professional Misconduct in Foreign Jurisdiction.

(1) *Notice of Discipline by a Foreign Jurisdiction.* A member of The Florida Bar must file a copy of any order or judgment by a court or other authorized disciplinary agency of another state or by a federal court effecting a disciplinary resignation, disciplinary revocation, disbarment, or suspension or any other surrender of the member's license to practice law in lieu of discipline with the Supreme Court of Florida and the executive director of The Florida Bar within 30 days of its effective date.

(2) *Effect of Adjudication or Discipline by a Foreign Jurisdiction.* The Supreme Court of Florida may issue an order suspending the member who is the subject of the final adjudication on an emergency basis petition of The Florida Bar attaching a copy

of the final adjudication by a foreign court or disciplinary authority. All of the conditions not in conflict with this rule applicable to issuance of emergency suspension orders elsewhere within these Rules Regulating The Florida Bar are applicable to orders entered under this rule.

(m) Discipline on Removal from Judicial Office.

(1) *Notice of Removal.* The clerk of the Supreme Court of Florida will forward a copy of any order removing a member of The Florida Bar from judicial office for judicial misconduct to the executive director of The Florida Bar.

(2) *Filing of Formal Complaint.* The Florida Bar may file a formal complaint with the Supreme Court of Florida and seek appropriate discipline on receipt of an order removing a member from judicial office for judicial misconduct.

(3) *Admissibility of Order; Conclusive Proof of Facts.* The order of removal is admissible in proceedings under these rules and is conclusive proof of the facts on which the judicial misconduct was found by the Supreme Court of Florida.

(4) *Determination of Lawyer Misconduct.* The issue of whether the facts establishing the judicial misconduct also support a finding of lawyer misconduct are determined by the referee based on the record of the proceedings.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); May 12, 2005, effective January 1, 2006 (907 So.2d 1138); June 29, 2006, effective August 1, 2006 (SC05-1684) (933 So.2d 498); April 5, 2007 (SC07-460) (954 So.2d 15); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended Jan. 4, 2019, effective March 5, 2019 (267 So.3d 891).

RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES

(a) Screening of Inquiries. Bar counsel must review each written inquiry and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline before opening a disciplinary file. Bar counsel may refer the matter to The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14 with the consent of the complaining witness and respondent if bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under these rules. Bar counsel may decline to pursue the inquiry if bar counsel determines that the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. A decision by bar counsel not to pursue an inquiry does not preclude further action or review under the Rules Regulating The Florida Bar. Bar counsel must notify the complaining witness and respondent of a decision not to pursue an inquiry and the reasons bar counsel closed the inquiry.

(b) Complaint Processing and Bar Counsel Investigation. Bar counsel will open a disciplinary file if bar counsel determines further investigation is warranted. Bar counsel must investigate the allegations contained in any written complaint that is signed under oath as provided in this rule. Bar counsel may open a disciplinary file and investigate when bar counsel possesses information that indicates a bar member may have violated any Rules Regulating The Florida Bar. Bar counsel may obtain subpoenas for witness attendance and the production of documentary evidence in accordance with Rule 3-7.11.

(c) Form for Complaints. All complaints must be in writing and signed under penalty of perjury, except those initiated by The Florida Bar. Complaints may be signed electronically and submitted to the bar electronically. The complaint must contain a statement providing:

Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.

(d) Dismissal of Disciplinary Cases. Bar counsel may dismiss disciplinary cases if bar counsel determines, after complete investigation, that the facts show the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel does not preclude further action or review under the Rules Regulating The Florida Bar. Bar counsel may dismiss a case with or without a letter of advice with the concurrence of the grievance committee chair as described elsewhere in these Rules Regulating The Florida Bar. Bar counsel must notify the complainant of the dismissal and reasons for dismissal.

(e) Diversion to Practice and Professionalism Enhancement Programs. Bar counsel may recommend diversion of disciplinary cases as provided elsewhere in these rules if, after complete investigation, bar counsel determines that the facts show the respondent's conduct did not constitute disciplinary violations more severe than minor misconduct.

(f) Referral to Grievance Committees. Bar counsel may refer disciplinary cases to a grievance committee for its further investigation or action as authorized elsewhere in these rules. Bar counsel may recommend specific action on a case referred to a grievance committee.

(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff. Bar counsel's closure of an inquiry or complaint is deemed a finding of no probable cause for further disciplinary proceedings and becomes public in accordance with this subchapter.

Added March 16, 1990, effective March 17, 1990 (558 So.2d 1008); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective October 1, 1998 (718 So.2d 1179); amended ; July 7, 2011, effective October 1, 2011 (67 So.3d 1037); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. The bar must provide a list of the grievance committee members with the notice of grievance committee hearing sent to the respondent.

(b) Complaint Filed With Grievance Committee. A grievance committee that receives a complaint directly from a complainant must report it to the appropriate bar counsel for docketing and assignment of a case number, unless the committee resolves the complaint within 10 days after receipt of the complaint. A written report to bar counsel must include the following information: complainant's name and address, respondent's name, date complaint received by committee, copy of complaint letter or summary of the oral complaint made, and the name of the committee member assigned to the investigation. Formal investigation by a grievance committee may proceed after the matter has been referred to bar counsel for docketing.

(c) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by bar counsel, whether based on a written complaint or not. The grievance committee may issue subpoenas in accordance with Rule 3-7.11.

(d) Conduct of Proceedings. The proceedings of grievance committees may be informal in nature and the committees are not bound by the rules of evidence.

(e) No Delay for Civil or Criminal Proceedings. An investigation may not be deferred or suspended without the approval of the appropriate designated reviewer, even though the respondent is a party to civil litigation or is a defendant or is acquitted in a criminal action, even if the proceedings involve the subject matter of the investigation.

(f) Counsel and Investigators. Staff counsel may appoint a bar counsel or an investigator to assist the grievance committee in an investigation, at the committee's request. Bar counsel will assist each grievance committee in carrying out its investigative and administrative duties and will prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recommended discipline for minor misconduct, and letters of advice after no probable cause findings.

(g) Quorum, Panels, and Vote.

(1) *Quorum.* Three members of the committee, 2 of whom must be lawyers, constitute a quorum.

(2) *Panels.* The grievance committee may be divided into panels of not fewer than 3 members, at least 2/3 of whom must be lawyers. The grievance committee may be divided into panels only on concurrence of the designated reviewer and the chair of the grievance committee. The panel will elect 1 of its lawyer members to preside over the panel's actions. If the chair or vice-chair is a member of a panel, the chair or vice-chair is the presiding officer.

(3) *Vote.* All findings of probable cause and recommendations of guilt of minor misconduct must be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members. There is no required minimum number of lawyer members voting in order to satisfy the requirements of this rule. The number of committee members voting for or against the committee report must be recorded. Minority reports may be filed. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and to produce evidence, as any other witness, unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. The bar must advise the respondent of the conduct that is being investigated and the rules that may have been violated at a reasonable time before any finding of probable cause or minor misconduct is made. The bar must provide the respondent with all materials considered by the committee and give the respondent an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

(i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. The

complainant has the right to be present at any grievance committee hearing when the respondent is present before the committee, unless found impractical by the chair of the grievance committee for unreasonable delay or other good cause. The bar's investigation will be completed, regardless of whether the complaining witness is uncooperative, delays, or notifies the bar of settlement or compromise with the respondent or that the respondent has made restitution. The complaining witness has no right to appeal.

(j) Finding of No Probable Cause.

(1) *Authority of Grievance Committee.* A grievance committee may terminate an investigation by finding that no probable cause exists to believe the respondent has violated these rules. The committee may issue a letter of advice to the respondent in connection with the finding of no probable cause.

(2) *Notice of Committee Action.* Bar counsel must notify the respondent and complainant of the action of the committee.

(3) *Effect of No Probable Cause Finding.* A finding of no probable cause by a grievance committee does not preclude the reopening of the case and further proceedings.

(4) *Disposition of Committee Files.* The committee will forward its file to bar counsel for disposition under established bar policy.

(k) Letter Reports in No Probable Cause Cases. Bar counsel will submit a letter report of a no probable cause finding to the complainant, presiding member, investigating member, and the respondent, including any appropriate documentation, explaining why the complaint did not warrant further proceedings. Letters of advice issued by a grievance committee in connection with findings of no probable cause must be signed by the presiding member of the committee. Letter reports and letters of advice do not constitute a disciplinary sanction.

(l) Preparation, Forwarding, and Review of Grievance Committee Complaints. If a grievance committee or the board of governors finds probable cause, the bar counsel assigned to the

committee must promptly prepare a record of its investigation and a formal complaint. The record before the committee consists of all reports, correspondence, papers, or recordings provided to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter. The committee may retire into executive session to debate the issues involved and decide the action to be taken. The formal complaint must be approved by the member of the committee who presided in the proceeding. The board prescribes the form of formal complaints. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes. If bar counsel does not agree with the changes, the matter is referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer or is not returned to the grievance committee for further action, the formal complaint must be promptly forwarded to and reviewed by staff counsel. Staff counsel must file the formal complaint and provide a copy to the respondent. Staff counsel must request the Chief Justice of the Supreme Court of Florida to assign a referee or to order the chief judge of the appropriate circuit to assign a referee to try the case. A copy of the record will be made available to the respondent at the respondent's expense.

If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action.

(m) Recommendation of Admonishment for Minor Misconduct. If the committee recommends an admonishment for minor misconduct, bar counsel drafts the grievance committee report, and the presiding member signs it. The committee report need only include: (1) the committee's recommendations regarding the admonishment, revocation of certification, and conditions of recertification; (2) the committee's recommendation as to the method of administration of the admonishment; (3) a summary of

any additional charges that will be dismissed if the admonishment is approved; (4) any comment on mitigating, aggravating, or evidentiary matters the committee believes will be helpful to the board in passing on the admonishment recommendation; and (5) an admission of minor misconduct signed by the respondent, if the respondent has admitted guilt to minor misconduct. No record need be submitted with the report. After the presiding member signs the grievance committee report, the report is returned to bar counsel. The report recommending an admonishment must be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy any defect, or if the designated reviewer does not present the report to the disciplinary review committee for action by the board, bar counsel will then serve the report on the respondent.

(n) Rejection of Admonishment. The order of admonishment becomes final unless rejected by the respondent within 30 days after service on the respondent. If rejected by the respondent, bar counsel will prepare a formal complaint as in a finding of probable cause.

(o) Recommendation of Diversion to Remedial Programs. A grievance committee may recommend, as an alternative to issuing a finding of minor misconduct or no probable cause with a letter of advice, diversion of the disciplinary case to a practice and professionalism enhancement program as provided elsewhere in these rules. A respondent may reject the diversion recommendation in the same manner as provided in the rules applicable to rejection of findings of minor misconduct. In the event that a respondent rejects a recommendation of diversion, the matter is returned to the committee for further proceedings.

Former Rule 3-7.3 renumbered as Rule 3-7.4 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); November 19, 2009, effective February 1, 2010 (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (67 So.3d 1037); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. Notice of grievance committee action recommending either diversion to a practice and professionalism enhancement program or finding no probable cause, no probable cause with a letter of advice, minor misconduct, or probable cause will be given to the designated reviewer for review. The designated reviewer may request grievance committee reconsideration or refer the matter to the disciplinary review committee of the board of governors within 30 days of notice of grievance committee action. The request for grievance committee reconsideration or referral to the disciplinary review committee must be in writing and must be submitted to bar counsel. For purposes of this subdivision letters, memoranda, handwritten notes, facsimile documents, and e-mail constitute communication “in writing.”

(1) *Requests for Grievance Committee Reconsideration.* If the designated reviewer requests grievance committee reconsideration, bar counsel forwards the request to the chair of the grievance committee and gives notice to the respondent and complainant that the request has been made. If the grievance committee agrees to reconsider the matter, the rule prescribing procedures before a grievance committee applies.

(2) *Referrals to Disciplinary Review Committee and Board of Governors.* If the designated reviewer refers the matter to the disciplinary review committee, bar counsel prepares and submits a discipline agenda item for consideration by the committee. Bar counsel must give notice to respondent and complainant that the designated reviewer has made the referral for review.

(3) *Nature of Disciplinary Review Committee and Board of Governors Review.* The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any review on referral from a designated reviewer is consultation on pending litigation and is not subject to intervention by persons outside the relationship between the bar and its counsel.

(4) *Effect of Failure to Timely Make the Request for Reconsideration or Referral for Review.* If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the grievance committee action becomes final.

(5) *Authority of Designated Reviewer to Make Recommendations.* When the designated reviewer makes a request for reconsideration or referral for review, the designated reviewer may recommend:

(A) referral of the matter to the grievance mediation program;

(B) referral of the matter to the fee arbitration program;

(C) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(D) closure of the disciplinary file by the entry of a finding of no probable cause;

(E) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(F) a finding of minor misconduct; or

(G) a finding of probable cause that further disciplinary proceedings are warranted.

(b) Review of Grievance Committee Matters. The disciplinary review committee reviews those grievance committee matters referred to it by a designated reviewer and reports to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee is final unless overruled by the board. Recommendations of the disciplinary review committee may include:

(1) referral of the matter to the grievance mediation program;

- (2) referral of the matter to the fee arbitration program;
- (3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6) a finding of minor misconduct; or
- (7) a finding of probable cause that further disciplinary proceedings are warranted.

(c) Board Action on Review of Designated Reviewer Recommendations. On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part. Action by the board may include:

- (1) referral of the matter to the grievance mediation program;
- (2) referral of the matter to the fee arbitration program;
- (3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6) a finding of minor misconduct; or
- (7) a finding of probable cause that further disciplinary proceedings are warranted.

(d) Notice of Board Action. Bar counsel must give notice of board action to the respondent, complainant, and grievance committee.

(e) Finding of No Probable Cause. A finding of no probable cause by the board is final and no further proceedings may be conducted in the matter by The Florida Bar unless a reason arises at a later time to re-open the file.

(f) Control of Proceedings. Bar counsel, however appointed, is subject to the direction of the board at all times. The board, in the exercise of its discretion as the governing body of The Florida Bar, has the power to terminate disciplinary proceedings before a referee prior to the receipt of evidence by the referee, whether these proceedings have been instituted on a finding of probable cause by the board or a grievance committee.

(g) Filing Service on Board of Governors. All matters to be filed with or served on the board must be addressed to the board of governors and filed with the executive director.

(h) Custodian of Bar Records. The executive director or his designees are the custodians of the official records of The Florida Bar.

Former Rule 3-7.4 renumbered as Rule 3-7.5 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, amended, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); May 20, 2004 - amended (SC03-705); corrected opinion issued July 7, 2004; (875 So.2d 448; December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); amended July 7, 2011, effective October 1, 2011 (SC10-1968), amended November 9, 2017, effective February 1, 2018 (234 So. 3d 577).

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees.

(1) *Appointment.* The chief justice 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. These appointees 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. Proceedings after assignment of a referee are adversary proceedings conducted under this rule.

(c) Pretrial Conference. The referee 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 must enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial 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 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 will be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar 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 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 must investigate as is necessary and prepare and prosecute with utmost diligence any case assigned.

(h) Pleadings. Pleadings may be informal and must comply with the following.

(1) *Complaint; Consolidation and Severance.*

(A) Filing. The complaint must be filed in the Supreme Court of Florida.

(B) Content. The complaint must set forth the particular act or acts of conduct for which the respondent is sought to be disciplined.

(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.

(2) *Answer and Motion.* 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.* 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 are considered denied by the bar.

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

(5) *Filing and Service of Pleadings.*

(A) *Before Appointment of Referee.* Any pleadings filed in a case before appointment of a referee must be filed with the Supreme Court of Florida in an electronic format approved by the supreme court and must include a certificate of service showing parties on whom service of copies has been made. The Supreme Court of Florida notifies the parties of 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 must be filed with the referee in an electronic format approved by the supreme court and must include a certificate of service showing service of a copy on the bar's staff counsel and bar counsel 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 bar.*

(6) *Amendment.* 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.* 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 proceeding 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 will appoint a successor referee from that same circuit.

(i) Notice of Final Hearing. Either party or the referee may set the cause for trial with at least 10 days notice. The trial will be held as soon as possible after 10 days from the filing of the respondent's answer or, if no answer is filed, from the date the answer is due.

(j) The Respondent. The bar may call the respondent as a witness 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. 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 has no rights other than those of any other witness. 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 on to testify and produce evidence as any other witness. The bar may proceed with trial regardless of a complaining witness' lack of cooperation or any settlement, compromise, or restitution between the respondent and complaining witness. The complaining witness has no right to appeal.

(l) Parol Evidence. Evidence, other than that contained in a written 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 may be

used only if necessary to resolve issues of excessive fees or excessive costs.

(m) Referee's Report.

(1) *Timing of Report.* The referee must enter 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. Failure to enter the report in the time prescribed does not deprive the referee of jurisdiction.

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

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

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

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

(D) the respondent's disciplinary history on record with the bar's executive director 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 those costs should be taxed.

(3) *Filing of Report.* The referee must file the report and record of proceedings with the Supreme Court of Florida in an electronic format approved by the supreme court. The referee must

serve copies of the report on the parties including staff counsel. Bar counsel will make a copy of the record, as 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 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.* A court reporter must attend and record all testimony at all hearings at which testimony is presented. Transcripts of testimony are not required to be filed in the matter. Any party requesting transcripts be filed in the matter must pay the cost of transcription directly to the court reporter. If the referee orders that transcripts be filed, they are subject to assessment as costs as elsewhere provided in these rules.

(2) *Contents.* The record includes 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, prepares the record, 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 in an electronic format approved by the supreme court.

(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 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.* A guilty plea tendered before filing of a complaint by staff counsel must be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint.* The respondent may enter a written guilty plea after a complaint has been filed in writing with the referee to whom the cause has been assigned for trial. The referee may take testimony on the guilty plea, then must enter a report as otherwise provided.

(3) *Unconditional.* An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure.* All guilty plea procedures are as 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 for the purposes of these rules 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, the bar may decline to reproduce the documents in the bar's offices and 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 will deliver the original documents to be copied, at the requesting party's expense, if the photocopy service agrees to

preserve and return the original documents and not release them to any person without the bar's consent.

(q) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings 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 has discretion to award costs and, absent an abuse of discretion, the court will not reverse the referee's award.

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

(4) *Assessment of Respondent's Costs.* The referee may assess the respondent's costs against the bar if the bar is

unsuccessful in prosecuting a matter and the bar raised no justiciable issue of either law or fact.

(5) *Time for Filing Motion to Assess Costs.* A party 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 waives of the right to request reimbursement of costs or to object to a request for reimbursement of costs. This subdivision does not require the filing of a motion to assess costs before the referee when doing so is not appropriate.

Court Comment

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.

Comment

Provisions for assessment of costs in proceedings before the Supreme Court of Florida are addressed in rule 3-7.7.

Amended April 20, 1989 (542 So.2d 982). Renumbered as Rule 3-7.6 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Amended Feb. 13, 1992 (594 So.2d 735); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009, effective February 1, 2010 (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (67 So.3d 1037); amended June 2, 2022, effective August 1, 2022 (SC22-144); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All referee reports and all judgments entered in proceedings under these rules are subject to review by the Supreme Court of Florida in the following manner.

(a) Right of Review.

(1) Any party to a proceeding may request review of all or part of a referee's report or judgment entered under these rules.

(2) The Supreme Court of Florida reviews all referee reports and judgments recommending probation, public reprimand, suspension, disbarment, or revocation pending disciplinary proceedings.

(3) A referee's report that does not recommend probation, public reprimand, suspension, disbarment, or revocation pending disciplinary proceedings is final if not appealed.

(b) Appointment of Bar Counsel. The board or staff counsel, if authorized by the board, may appoint new or additional bar counsel to represent The Florida Bar on any review.

(c) Procedure for Review. The Supreme Court of Florida will conduct its review using the following procedures.

(1) *Notice of Intent to Seek Review of Report of Referee.* A party to a bar disciplinary proceeding must file notice of intent to seek review of a referee's report, specifying any portion of the referee's report to be reviewed, within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida in an electronic format approved by the Supreme Court of Florida. The Florida Bar will provide prompt written notice of the board's action, if any, to the respondent. The opposing party may file a cross-notice for review specifying any additional portion of the referee's report for which that party seeks review within 20 days after service of the notice. The filing of the notice or cross-notice to seek review is jurisdictional, and the party who fails to timely file notice loses supreme court review as a right. The court may, in its

discretion, consider a late-filed notice or cross-notice on a showing of good cause.

(2) *Record on Review.* The report and record filed by the referee constitute the record on review. If hearings were held at which testimony was heard, but no transcripts were filed in the matter, the party seeking review must order preparation of all transcripts, file the transcripts with the court, and serve copies on the opposing party on or before the time of filing of the initial brief, as provided elsewhere in this rule. The party seeking review must pay the court reporter cost of transcript preparation. Failure to timely file and serve all transcripts may be cause to dismiss the party's petition for review.

(3) *Briefs.* The party first seeking review must file a brief in support of the notice of intent to seek review within 30 days of the filing of the notice. The opposing party must file an answer brief within 20 days after the service of the initial brief of the party seeking review, which must also support any cross-notice for review. The party originally seeking review may file a reply brief within 20 days after the service of the answer brief. The cross-reply brief, if any, must be served within 20 days of the reply brief's filing. Computation of time for filing briefs under this rule shall follow the applicable Florida Rules of Appellate Procedure. The form, length, binding, type, and margin requirements of briefs filed under this rule follow the requirements of Fla. R. App. P. 9.210.

(4) *Oral Argument.* Request for oral argument may be filed in any case a party files a notice of intent to seek review at the time of filing the first brief. If no request is filed, the case will be disposed of without oral argument, unless the court orders otherwise.

(5) *Burden.* On review, the burden is on the party seeking review to demonstrate that all or part of the referee report is erroneous, unlawful, or unjustified.

(6) *Judgment of Supreme Court of Florida.*

(A) *Authority.* The Supreme Court of Florida will enter an appropriate order or judgment after review. If no review is

sought of a referee's report entered under the rules and filed in the court, the findings of fact are deemed conclusive, and the referee's recommended disciplinary measure will be the disciplinary measure imposed by the court, unless the court directs the parties to submit briefs or conduct oral argument on the suitability of the referee's recommended disciplinary measure. A referee's report that becomes final when no review has been timely filed will be reported in an order of the Supreme Court of Florida.

(B) Form. The court's judgment may include judgment in favor of any:

- (i) party to whom costs are awarded;
- (ii) person to whom restitution is ordered; or
- (iii) person to whom a fee is ordered to be forfeited.

(7) *Procedures on Motions to Tax Costs.* The court may consider a motion to assess costs if the motion is filed within 10 days of the entry of the court's order or opinion where the referee finds the respondent not guilty at trial and the court, on review, finds the respondent guilty of at least 1 rule violation and does not remand the case to the referee for further proceedings or where the respondent was found guilty at trial and the court, on review, finds the respondent not guilty of any rule violation. The party from whom costs are sought has 10 days from the date the motion was filed in which to serve an objection. Failure to timely file a petition for costs or timely serve an objection, without good cause, waives the request or objection to the costs, and the court may enter an order without further proceedings. If an objection is timely filed, or the court otherwise directs, the court will remand the motion to the referee. On remand, the referee must file a supplemental report that includes a statement of costs incurred and the manner in which the costs should be assessed. Any party may seek review of the supplemental report of referee in the same manner as provided for in this rule for other reports of the referee.

(d) Precedence of Proceedings. Notices of intent to seek review in disciplinary proceedings take precedence over all other civil causes in the Supreme Court of Florida.

(e) Extraordinary Writs. All applications for extraordinary writs that are concerned with disciplinary proceedings under these rules of discipline must be made to the Supreme Court of Florida.

(f) Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure are applicable to notices of intent to seek review in disciplinary proceedings if consistent with this rule. Service on bar counsel and staff counsel constitutes service on The Florida Bar.

(g) Contempt by Respondent. A petition for an order to show cause why the respondent should not be held in contempt in a disciplinary proceeding and the proceedings on the petition may be filed in and determined by the court or as provided under rule 3-7.11(f).

(h) Pending Disciplinary Cases. If the court orders disbarment, that order may include the dismissal without prejudice of other pending disciplinary cases against the respondent. If the revocation is granted by the court, the revocation dismisses all pending disciplinary cases against that respondent.

Comment

Subdivision (c)(7) of this rule applies to situations that arise when a referee finds a respondent not guilty but the court, on review, finds the respondent guilty and does not remand the case to the referee for further proceedings. *See, e.g., The Florida Bar v. Pape*, 918 So. 2d 240 (Fla. 2005). A similar situation may also occur where a respondent is found guilty at trial, but not guilty by the court on review of the referee's report and recommendation.

Former Rule 3-7.6 renumbered as Rule 3-7.7 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); November 19, 2009, effective February 1, 2010, SC08-1890, (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (101 So.3d 807); amended March 3, 2022,

effective May 2, 2022 (SC20-1467); amended September 7, 2023; effective November 6, 2023 (SC22-1293).

RULE 3-7.8 PROCEDURES BEFORE A CIRCUIT COURT

(a) Filing of Motion. Whenever it shall be made known to any of the judges of the district courts of appeal or any judge of a circuit court or a county court in this state that a member of The Florida Bar practicing in any of the courts of the district or judicial circuit or county has been guilty of any unprofessional act as defined by these rules, such judge may direct the state attorney for the circuit in which the alleged offense occurred to make in writing a motion in the name of the State of Florida to discipline such attorney, setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined.

(b) Copy Served Upon Respondent. Upon the filing of a motion in circuit court to discipline an attorney, a copy thereof shall be served upon the respondent attorney, and the respondent shall, within 20 days after the service thereof, file an answer thereto. A copy of such motion shall be filed with the executive director of The Florida Bar at the time of service upon the respondent.

(c) Trial Before a Circuit Judge. Upon the filing of the answer, the chief judge of the judicial circuit in which the alleged offense occurred shall designate a judge other than the judge who directed the filing of the motion to try said cause. Such judge shall conduct a hearing thereon and shall hear the evidence to be offered by the State of Florida and the respondent. A representative or representatives of The Florida Bar, appointed by the board, shall have the right to be present and to observe the proceedings. Upon the conclusion of the hearing, the judge shall enter such judgment of dismissal, reprimand, probation, suspension, or disbarment as shall be appropriate to the circumstances. The parties shall be entitled to compulsory process to force the attendance of any witnesses.

(d) Judgment Filed in Supreme Court of Florida. If the judgment be one of public reprimand, probation, suspension, or disbarment, 3 certified copies of the same shall be forthwith filed by

the clerk of the trial court with the clerk of the Supreme Court of Florida. The clerk of the Supreme Court of Florida shall retain one copy for the court's records, deliver to the executive director of The Florida Bar one copy of the judgment for The Florida Bar's official records, and shall forthwith serve the third copy upon the respondent.

(e) Petition for Appellate Review. The respondent may appeal from a judgment entered by a circuit court. Such appeal shall be made in the manner provided by rule 3-7.7.

(f) Duty to Expedite Proceedings. It shall be the duty of the state attorney who is directed to file said motion to file the same promptly and to dispose of said controversy expeditiously.

(g) Readmission or Reinstatement. Readmission or reinstatement of attorneys disbarred or suspended by proceedings in circuit courts shall be governed as elsewhere provided in these rules.

(h) Reporting Misconduct to The Florida Bar. Nothing herein shall be construed to discourage or restrict the right and responsibility of a judge to refer to The Florida Bar the conduct of its members, which in the opinion of the judge, warrants investigation to determine if a violation of the Rules of Professional Conduct has occurred.

Former Rule 3-7.7 renumbered as Rule 3-7.8 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-7.9 CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. If a respondent states a desire to plead guilty before a formal complaint is filed, bar counsel consults established board guidelines for discipline and confers with the designated reviewer. If the designated reviewer rejects the proposed consent judgment, the matter is not referred to the board of governors. If bar counsel and the designated reviewer approve the proposed consent judgment, bar counsel advises the respondent that bar counsel and the designated reviewer will

recommend approval of the respondent's written plea, and the matter is placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel notifies the respondent and file all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel prepares and files a complaint as provided elsewhere in these rules.

(b) After Filing of Formal Complaint. If a respondent states a desire to plead guilty to a formal complaint that has been filed, staff counsel consults established board guidelines for discipline and confers with the designated reviewer. If the designated reviewer rejects the proposed consent judgment, the plea is not filed with the referee. If staff counsel and the designated reviewer approve the proposed consent judgment, bar counsel advises the respondent that staff counsel and the designated reviewer will recommend approval of the respondent's written plea and the consent judgment is filed with the referee. If the referee accepts the consent judgment, the referee enters a report and files the report with the court as provided elsewhere in these rules. If the referee rejects the consent judgment, the matter proceeds as provided in this chapter.

(c) Approval of Consent Judgments. Acceptance of any proposed consent judgment is conditioned on final approval by the Supreme Court of Florida, and the court's order will recite the disciplinary charges against the respondent.

(d) Content of Conditional Pleas. All conditional pleas must show clearly by reference or otherwise the disciplinary offenses to which the plea is made. All conditional pleas in which the respondent agrees to the imposition of a suspension or disbarment must include an acknowledgment that, unless waived or modified by the court on motion of the respondent, the court order accepting the conditional plea will contain a provision that prohibits the respondent from accepting new business from the date of the order or opinion and must provide that the suspension or disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients. A conditional plea may not permit a respondent to begin serving a suspension or disbarment until the

Supreme Court of Florida issues an order or opinion approving the recommended discipline.

(e) Disbarment on Consent. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent has the same effect as, and is governed by, the same rules provided for disbarment elsewhere in these rules. Matters involving disbarment on consent are processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these rules, except that a respondent may enter into a disbarment on consent without admitting any of the facts or rule violations alleged by the bar. In that event, the disbarment on consent must set forth a brief recitation of the allegations underlying the disbarment on consent. This option is only available for disbarments on consent and not for any other type of consent judgment.

(f) Effect of Pleas on Certification. In negotiating consent judgments with a respondent or in recommending acceptance, rejection, or offer of a tendered consent judgment, staff counsel and the designated reviewer must consider and express a recommendation on whether the consent judgment will include revocation of certification if held by the lawyer and restrictions to be placed on recertification. When certification revocation is agreed to in a consent judgment, the revocation and any conditions on recertification will be reported to the legal specialization and education director for recording purposes.

Former Rule 3-7.8 renumbered as Rule 3-7.9 March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); March 22, 2007, effective June 1, 2007 (SC06-1840), (952 So.2d 1185). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

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 under this rule. The proceedings under this rule do not apply to any lawyer who is 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 an electronic format approved by the supreme court and in compliance with the Florida Rules of Civil Procedure and the Florida Rules of General Practice and Judicial Administration. A copy must be served on the Florida Bar's staff counsel 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 that may be reasonably required to determine the petitioner's fitness to resume the practice of law may include, but is not limited to: 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 petitioner's character and fitness 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 evidence to the referee.

(f) Referee Hearing Determining Fitness. 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 petitioner's fitness 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 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;

(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;

(O) holding out as if eligible to practice in any manner including, but not limited to, use of terms such as lawyer, attorney, esquire, or counselor at law in any communication including, but not limited to, letterhead, business cards, websites, and social media; and

(P) 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 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). The results for both exams must be valid under the Rules of the Supreme Court Relating to Admission to the Bar when the petition is filed and will remain valid for at least 3 years after the filing of the petition. 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 before the hearing to the petitioner, lawyers representing The Florida Bar, and other persons who may be designated by the appointed referee.

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

(3) *Petitioner's Failure to Submit to Examination.* 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.* Bar counsel may, with the approval of the designated reviewer and staff counsel, stipulate to the issue of reinstatement, including conditions for reinstatement if 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 to deny reinstatement after discovery is completed. The stipulation must include a statement of costs as provided elsewhere in these 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 that treatment or counseling to evaluate the petitioner's fitness. The provisions of rule 3-7.1(d) 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. If petitioner's suspension or incapacity has continued for more than 3 years, the reinstatement may be conditioned on proof of competency as required by the Supreme Court of Florida. Proof may include certification by the Florida Board of Bar Examiners of successful completion of an examination for admission to The Florida Bar after the date of the suspension or incapacity.

(k) Successive Petitions. No person may file a petition for reinstatement 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 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 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 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, 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 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 disposition, and the name and address of the authority in possession of these records;

(L) a statement as to whether any fraud charges 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, 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 on 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 all restitution and disciplinary costs ordered or assessed have been paid, together with any interest accrued.

(1) *Readmission After Disbarment.* Except as otherwise provided in these rules, no application for admission may be tendered within 5 years after the date of disbarment or any longer period of time 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 that 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. 2d994, 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 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. *Fla. Bar v. Juan Baraque*, 43 So. 3d 691 (Fla. 2010).

Former Rule 3-7.9 renumbered as Rule 3-7.10 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088); amended Jan. 4, 2019, effective March 5, 2019 (267 So.3d 891); amended June 2, 2022, effective August 1, 2022 (SC22-144); amended September 7, 2023, effective November 6, 2023 (SC22-1293).

RULE 3-7.11 GENERAL RULE OF PROCEDURE

(a) Time is Directory. Except as provided in this rule, the time intervals required are directory only and are not jurisdictional. Failure to observe these directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court of Florida, but will not prejudice the offending party, except where provided.

(b) Process. Every member of The Florida Bar must notify The Florida Bar of any change of mailing address, e-mail address (unless the lawyer has been excused by The Florida Bar or the Supreme Court of Florida from e-filing and e-service), and military status. The Florida Bar may serve notice of formal complaints in bar proceedings by certified U.S. Postal Service mail return receipt requested to the bar member's record bar address unless the Supreme Court of Florida directs other service. Every lawyer of another state who is admitted pro hac vice in a specific case before a court of record in Florida may be served by certified U.S. Postal Service mail return receipt requested addressed to the lawyer in care of the Florida lawyer who was associated or appeared with the lawyer admitted pro hac vice or addressed to the Florida lawyer at any address listed by the lawyer in the pleadings in the case.

Service of process and notices must be directed to counsel whenever a person is represented by counsel.

(c) Notice in Lieu of Process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court of Florida and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings. The Florida Bar will serve the complaint on the respondent by certified U.S. Postal Service mail return receipt requested to the respondent's record bar address or a more current address that may be known to the person serving the complaint.

When the respondent is represented by counsel in a referee proceeding, The Florida Bar will serve the formal complaint by certified U.S. Postal Service mail return receipt requested to the record bar address of the respondent's counsel or a more current address that may be known to the person serving the complaint.

All other correspondence between The Florida Bar and respondents or their counsel, including bar inquiries that require responses during the investigative stage of a disciplinary proceeding, may be made by e-mail to the respondent's record bar e-mail address or the record bar e-mail address of respondent's counsel. E-mail correspondence is encouraged in all instances except in service of a formal complaint or subpoena, or where a

court directs otherwise. If a lawyer has been excused by The Florida Bar or a court from e-filing and e-service or service cannot be made by e-mail, service by first class U.S. postal service mail is sufficient, except where these rules or a court direct otherwise.

(d) Issuance of Subpoenas. Subpoenas for witnesses' attendance and the production of documentary evidence, except before a circuit court, must be issued as follows.

(1) *Referees.* 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.

(2) *Grievance Committees.* Subpoenas for witnesses' attendance and the production of documentary evidence must be issued by the chair or vice-chair of a grievance committee as part of an investigation authorized by the committee. These subpoenas may be served by any member of the grievance committee, by an investigator employed by The Florida Bar, or in the manner provided by law for service of process.

(3) *Bar Counsel Investigations.* Subpoenas for witnesses' attendance and the production of documentary evidence before bar counsel in an initial investigation must be issued by the chair or vice-chair of a grievance committee to which the matter will be assigned, if appropriate. These subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

(4) *After Grievance Committee Action, But Before Appointment of Referee.* Subpoenas for witnesses' attendance and the production of documentary evidence before bar counsel when conducting further investigation after action by a grievance committee, but before appointment of a referee, must be issued by the chair or vice-chair of the grievance committee to which the matter was assigned. These subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for service of process.

(5) *Board of Governors.* Subpoenas for witnesses' and the production of documentary evidence before the board of governors must be issued by the executive director and must be served by an investigator employed by The Florida Bar or in the manner provided by law for service of process.

(6) *Confidential Proceedings.* If the proceeding is confidential, a subpoena must not name the respondent but must style the proceeding as "Confidential Proceeding by The Florida Bar under the Rules of Discipline."

(7) *Contempt.*

(A) Generally. Any persons who, without adequate excuse, fail to obey a subpoena served on them under these rules may be cited for contempt of the Supreme Court of Florida in the manner provided by this rule.

(B) Subpoenas for Trust Accounting Records. Members of the bar are under an obligation to maintain trust accounting records as required by these rules and, as a condition of the privilege of practicing law in Florida, may not assert any privilege personal to the lawyer that may be applicable to production of these records in any disciplinary proceedings under these rules.

(i) A respondent who has been found in willful noncompliance with a subpoena for trust accounting records may be cited for contempt under this rule only if the disciplinary agency that issued the subpoena has found that no good cause existed for the respondent's failure to comply.

(ii) The disciplinary agency that issued the subpoena must hear the issue of noncompliance and issue findings on the noncompliance within 30 days of a request for issuance of the notice of noncompliance.

(8) *Assistance to Other Lawyer Disciplinary Jurisdictions.* On receipt of a subpoena certified to be issued under the rules or laws of another lawyer disciplinary jurisdiction, the executive director may issue a subpoena directing a person domiciled or

found within the state of Florida to give testimony or produce documents or other evidence for use in the other jurisdiction's lawyer disciplinary proceedings as directed in the subpoena of the other jurisdiction. The practice and procedure applicable to subpoenas issued under this subdivision will be that of the other jurisdiction, except that:

(A) the testimony or production must be only in the county in which the person resides or is employed, or as otherwise fixed by the executive director for good cause shown; and

(B) compliance with any subpoena issued pursuant to this subdivision and contempt for failure in this respect must be sought under these rules.

(e) Oath of Witness. Every witness in every proceeding under these rules must be sworn to tell the truth. Violation of this oath is an act of contempt of the Supreme Court of Florida.

(f) Contempt. When a disciplinary agency, as defined elsewhere in these rules, finds that a person is in contempt under these rules, that person may be cited for contempt in the following manner.

(1) *Generally.*

(A) **Petition for Contempt and Order to Show Cause.** When a person is found in contempt by a disciplinary agency, bar counsel must file a petition for contempt and order to show cause with the Supreme Court of Florida.

(B) **Order to Show Cause; Suspension for Noncompliance with Subpoena for Trust Accounting Records.** On review of a petition for contempt and order to show cause, the Supreme Court of Florida may issue an order directing the person to show cause why the person should not be held in contempt and appropriate sanctions imposed.

The Supreme Court of Florida may also issue an order suspending the respondent from the practice of law in Florida until

the member fully complies with the subpoena and any further order of the Supreme Court of Florida.

The order of the Supreme Court of Florida must fix a time for a response.

(C) Response to Order to Show Cause.

(i) Generally. Any member subject to an order to show cause must file a response as directed by the Supreme Court of Florida.

(ii) Noncompliance with a Subpoena for Trust Account Records. Any member subject to an order to show cause for noncompliance with a subpoena for trust accounting records may request the Supreme Court of Florida:

a. to withhold entry of an order of suspension, if filed within 10 days of the filing of the petition for contempt and order to show cause, or another time the Supreme Court of Florida may direct in the order to show cause; or

b. to terminate or modify the order of suspension at any time after the order of suspension is issued. The Supreme Court of Florida may terminate, modify, or withhold entry of an order of suspension if the member establishes good cause for failure to comply with the subpoena for trust account records.

(D) Failure to Respond to Order to Show Cause.

On failure to timely respond to an order to show cause, the matters alleged in the petition are deemed admitted and the Supreme Court of Florida may enter a judgment of contempt and impose appropriate sanctions. Failure to respond may be an additional basis for the Supreme Court of Florida to enter a judgment of contempt and to impose sanctions.

(E) Reply of The Florida Bar. When a timely response to an order to show cause is filed, The Florida Bar will have 10 days, or another time period as the Supreme Court of Florida may order, from the date of filing to file a reply.

(F) Supreme Court of Florida Action. The Supreme Court of Florida will review the matter and issue an appropriate judgment after the time to respond to an order to show cause has expired and no response is timely filed, or after the reply of The Florida Bar has been filed, or the time has expired without any filing. This judgment may include any sanction that a court may impose for contempt and, if the person found in contempt is a member of The Florida Bar, may include any disciplinary sanction authorized under these rules.

If the Supreme Court of Florida requires factual findings, it may direct appointment of a referee as provided in these rules. Proceedings for contempt referred to a referee must be processed in the same manner as disciplinary proceedings under these rules, including, but not limited to, the procedures provided in these rules for conditional guilty pleas for consent judgments. If the Supreme Court of Florida determines it necessary to refer a request to terminate, modify, or withhold entry of an order of suspension based on a petition for contempt and order to show cause for noncompliance with a subpoena for trust account records to a referee for receipt of evidence, the referee proceedings must be expedited and conducted in the same manner as proceedings before a referee on a petition to terminate, modify, or withhold an order of emergency suspension, as provided in these rules.

(G) Preparation and Filing of Report of Referee and Record. The referee must prepare and file a report and the record in cases brought under this rule. The procedures provided for in the rule on procedure before a referee under these rules apply to the preparation, filing, and review of the record.

(H) Appellate Review of Report of Referee. Any party to the contempt proceedings may seek review of the report of referee in the manner provided in these rules for appellate review of disciplinary proceedings.

(2) *Failure to Respond to Official Bar Inquiries.*

(A) Petition for Contempt and Order to Show Cause. When a respondent is found in contempt by a disciplinary agency

for failure to respond to an official bar inquiry without good cause shown, bar counsel must file a petition for contempt and order to show cause with the Supreme Court of Florida.

(B) Response to Petition for Contempt and Order to Show Cause. The respondent will have 10 days from the date of filing of a petition authorized by this subdivision to file a response.

(C) Supreme Court of Florida Action.

(i) Entry of Suspension Order. The Supreme Court of Florida will enter an order suspending the respondent for failure to respond to an official bar inquiry after the respondent files a response to the order to show cause or the time for filing a response has expired, unless it orders otherwise.

(ii) Assignment to Referee. If the Supreme Court of Florida requires factual findings, it may direct appointment of a referee as provided in these rules. Proceedings for contempt referred to a referee must be processed in the same manner as disciplinary proceedings under these rules, including, but not limited to, the provisions provided for conditional guilty pleas for consent judgments.

(g) Court Reporters. Court reporters who are employees of The Florida Bar may be appointed to report any disciplinary proceeding. If the respondent objects at least 48 hours in advance of the matter to be recorded, an independent contract reporter may be retained. Reasonable costs for independent court reporter service will be taxed to the respondent for payment to The Florida Bar.

(h) Disqualification as Trier and Lawyer Due to Conflict.

(1) *Representation Prohibited.* Lawyers may not represent a party other than The Florida Bar in disciplinary proceedings authorized by these rules if they are:

(A) currently serving on a grievance committee or the board of governors;

(B) employees of The Florida Bar; or

(C) former members of a grievance committee, former members of the board of governors, or former employees of The Florida Bar if personally involved to any degree in the matter while a member of a grievance committee or the board of governors, or while an employee of The Florida Bar.

(2) *Representation Permitted With Consent by the Board of Governors.* Lawyers may represent a party other than The Florida Bar in disciplinary proceedings authorized by these rules only after receiving consent from the executive director or board of governors if they are:

(A) former members of a grievance committee, former members of the board of governors, or former employees of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the lawyer seeks to be a representative and who did not serve in a supervisory capacity over the matter within 1 year of the service or employment;

(B) a partner, associate, employer, or employee of a member of a grievance committee or a member of the board of governors; or

(C) a partner, associate, employer, or employee of a former member of a grievance committee or a former member of the board of governors within 1 year of the former member's service on the grievance committee or board of governors.

(i) Proceedings after Disbarment. The respondent may consent to or the Supreme Court of Florida may order further proceedings after disbarment, which may include: an audit of trust, operating, or personal bank accounts, the cost of which may be assessed as provided in these rules; a requirement that the respondent provide a financial affidavit attesting to personal and business finances; and maintenance of a current mailing address for a stated period of time.

Former Rule 3-7.10 amended June 8, 1989 (544 So.2d 193). Renumbered as Rule 3-7.11 and amended March 16, 1990, effective March 17, 1990

(558 So.2d 1008); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); December. 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010. Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107); amended Jan. 4, 2019, effective March 5, 2019 (267 So.3d 891).

RULE 3-7.12 DISCIPLINARY RESIGNATION FROM THE FLORIDA BAR SUNSETTED 1-1-06

Former Rule 3-7.11 renumbered as Rule 3-7.12 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 17, 1997 (697 So.2d 115); Feb. 8, 2001 (795 So.2d 1); Deleted October 6, 2005, effective January 1, 2006.

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

(a) Applicability. A lawyer may seek disciplinary revocation of admission to The Florida Bar if a disciplinary agency is investigating that lawyer's conduct before or after a recommendation of probable cause.

(b) Petition for Disciplinary Revocation. A petition for disciplinary revocation must be styled "In re(respondent's name).....," titled "Petition for Disciplinary Revocation," filed with the Supreme Court of Florida in an electronic format approved by the supreme court, and contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. The statement must describe the charges made or those under investigation for professional misconduct, results of past proceedings, and the status of pending investigations and proceedings. The petition must state whether it is with or without leave to apply for readmission to the bar. A copy of the petition must be served upon the executive director of The Florida Bar.

(c) Judgment. The Florida Bar must file with the Supreme Court of Florida its response to the petition either supporting or

opposing the petition for disciplinary revocation within 60 days after service of the petition on the bar. The bar's response must be determined by the bar's board of governors. The bar must serve a copy of the response on the petitioner. The Supreme Court of Florida will consider the petition, any response, and the charges against the petitioner. The Supreme Court of Florida may enter judgment granting disciplinary revocation if it has been shown by the petitioner in a proper and competent manner that granting the petition will not adversely affect the public interest, the integrity of the courts, the administration of justice, or the confidence of the public in the legal profession. The Supreme Court of Florida otherwise will deny the petition. A judgment granting disciplinary revocation may require that the disciplinary revocation be subject to appropriate conditions including, but not limited to, requiring the petitioner to submit to a full audit of all client trust accounts, execute a financial affidavit attesting to current personal and professional financial circumstances, and maintain a current mailing address with the bar for a period of 5 years after the disciplinary revocation becomes final or another time period.

(d) Effect of Disciplinary Revocation. Disciplinary revocation is tantamount to disbarment and terminates the lawyer's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar.

(e) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation does not stay the progress of the disciplinary proceedings without the approval of the bar's board of governors.

(f) Dismissal of Pending Disciplinary Cases. If disciplinary revocation is granted by the Supreme Court of Florida under this rule, the disciplinary revocation serves to dismiss all pending disciplinary cases.

(g) Costs of Pending Disciplinary Cases. The judgment of the court granting disciplinary revocation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary

cases against the respondent. These costs are as authorized elsewhere in these Rules Regulating The Florida Bar.

Comment

The disciplinary revocation rule replaces the former disciplinary resignation rule, but with added safeguards. Disciplinary revocation is allowed for a minimum of 5 years up to permanent disciplinary revocation. The bar's response to all petitions for disciplinary revocation must be determined by the bar's board of governors. Disciplinary revocation, like the formerly allowed disciplinary resignation, is "tantamount to disbarment." *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000). Like disbarred lawyers, lawyers whose licenses have been disciplinarily revoked remain subject to the continuing jurisdiction of the Supreme Court of Florida and must meet all requirements for readmission to bar membership. *The Florida Bar v. Ross*, 732 So.2d 1037, 1041 (Fla. 1998); *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000).

Added April 12, 2012, effective July 1, 2012 (101 So.3d 807); amended September 7, 2023; effective November 6, 2023 (SC22-1293).

RULE 3-7.13 INCAPACITY NOT RELATED TO MISCONDUCT

(a) Classification and Effect of Incapacity. Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity, or other infirmity, the attorney may be classified as an inactive member and shall refrain from the practice of law even though no misconduct is alleged or proved.

(b) Applicable Rules of Procedure. Proceedings under this rule shall be processed under the Rules of Discipline in the same manner as proceedings involving acts of misconduct except that emergency or interim proceedings authorized under rule 3-5.2 shall be processed as stated in that rule.

(c) Reinstatement to Practice. A member who has been classified as inactive under this rule may be reinstated in the same

manner as in proceedings for reinstatement after suspension for acts of misconduct.

(d) Proceedings Upon Adjudication of Incapacity or Hospitalization Under the Florida Mental Health Act or Under the Authority of Applicable Law. An attorney who has been adjudicated as incapacitated from the practice of law or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law may be classified as an inactive member and shall refrain from the practice of law. Upon receipt of notice that a member has been adjudicated as incapacitated or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, The Florida Bar shall file notice thereof with the Supreme Court of Florida. Thereafter the court shall issue an order classifying the member as an inactive member.

If an order of restoration is entered by a court having jurisdiction or the attorney is discharged from hospitalization under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, the attorney may be reinstated in the same manner as in proceedings for reinstatement after suspension for acts of misconduct.

(e) Proceedings Upon Consent to Incapacity. An attorney may consent to incapacity not for misconduct in the same manner as provided in rule 3-7.9 of these Rules Regulating The Florida Bar.

Former Rule 3-7.12 renumbered as Rule 3-7.13 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); March 23, 2000 (763 So.2d 1002); November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (101 So.3d 807).

RULE 3-7.14 FLORIDA STATUTES SUPERSEDED

These Rules of Discipline shall supersede such parts of sections 454.18, 454.31, and 454.32, Florida Statutes (1991), as are in conflict herewith.

Former Rule 3-7.13 renumbered as Rule 3-7.14 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-7.15 RESERVED FOR FUTURE USE

Former Rule 3-7.14 renumbered as Rule 3-7.15 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Jan. 4, 2019, effective March 5, 2019 (267 So.3d 891).

RULE 3-7.16 LIMITATION ON TIME TO OPEN INVESTIGATION

(a) Time for Initiating Investigation of Complaints and Re-opened Cases.

(1) *Initial Complaint or Investigation.* A complainant must make a written inquiry to The Florida Bar within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered. The Florida Bar must open an investigation initiated by The Florida Bar within 6 years from the time the matter giving rise to the investigation is discovered or, with due diligence, should have been discovered.

(2) *Re-opened Investigations.* A re-opened disciplinary investigation is not time barred by this rule if the investigation is re-opened within 1 year after the date on which the matter was closed, except that a re-opened investigation based on a deferral made in accordance with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar is not barred if re-opened within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which the deferral was based.

(3) *Deferred Investigations.* A disciplinary investigation that began with the opening of a discipline file and bar inquiries to a respondent within the 6-year time period as described in this rule and was then deferred under bar policy and the Rules Regulating The Florida Bar, is not time barred under this rule if a grievance committee finds probable cause and the bar files its formal

complaint within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which deferral was based.

(b) Exception for Theft or Conviction of a Felony Criminal Offense. There is no limit on the time in which to present, reopen, or bring a matter alleging theft or conviction of a felony criminal offense by a member of The Florida Bar.

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. The limitation of time in which to bring or reopen a complaint within this rule is tolled where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint.

(d) Constitutional Officers. Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.

Added July 20, 1995 (658 So.2d 930). Amended effective March 23, 2000 (763 So.2d 1002); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91), amended November 9, 2017, effective February 1, 2018; amended September 7, 2023; effective November 6, 2023 (SC22-1293).

RULE 3-7.17 VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a) Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process, including the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies.

(b) Authority of the Court. The Supreme Court of Florida has the sole authority to enter an order under the provisions of this rule.

(c) Procedure.

(1) *Commencement.* Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct.

(2) *Order to Show Cause.* The court, acting on its own motion, or on the recommendation of the referee or petition of the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order will be served on the referee, if one has been appointed, the respondent, and The Florida Bar.

(3) *Response to Order to Show Cause.* The individual alleged to have engaged in vexatious conduct has 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, is deemed a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response must be served on a referee, if one has been appointed, the respondent, and The Florida Bar.

(4) *Reply.* The referee, if one has been appointed, the respondent, and The Florida Bar have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided without good cause prohibits a reply.

(5) *Referral to Referee.* The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under this subdivision will be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules.

(d) Court Order.

(1) *Rejection of Communications.* An order issued under this rule may contain provisions permitting the clerk of the Supreme Court of Florida, referee, The Florida Bar, and/or any other individual(s) or entity(ies) specified in the order to reject or block vexatious communications as specifically designated in the order. The order may authorize the individual(s), entity(ies), or group(s) specified in the order to block telephone calls made or electronic mail sent by an individual subject to an order issued under the authority of this rule.

(2) *Denial of Physical Access.* The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations.

(3) *Prohibition of or Limitation on Filings.* The order of the court may include a requirement that an individual subject to an order issued under the authority of this rule may be prohibited from submitting any future filings unless they are submitted solely by a member of The Florida Bar who is eligible to practice law or another person authorized to appear in the proceedings. If a person who is subject to an order issued under this rule is a member of The Florida Bar, that member may be prohibited from co-signing and submitting future filings.

(e) Violation of Order. Violation of an order issued under this rule will be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar.

Comment

This rule is enacted to address circumstances involving repetitive conduct of the type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system, which must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, “every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution’s limited resources. A part of the court’s responsibility is to see that these resources are allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180, 184 (1989).

This concept has also been recognized in bar disciplinary proceedings by the Supreme Court of Florida when the court stated: “Kandekore’s actions create a drain on the Court’s limited time, for with each filing the Court has, as it must, reviewed and considered repetitious and meritless arguments. Therefore, we conclude that a limitation on Kandekore’s ability to file repeated challenges to his long-final sanctions would further the constitutional right of access because it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others.” *The Florida Bar re Kandekore*, 932 So. 2d 1005, 1006 (Fla. 2006). Kandekore engaged in vexatious conduct after the court entered an order of disbarment.

The Supreme Court of Florida has also limited the ability of a lawyer to file further pleadings while that lawyer’s disciplinary case(s) were in active litigation. *The Florida Bar v. Thompson*, 979 So. 2d 917 (Fla. 2008).

New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).

RULE 3-7.18 DISPOSITION OF INQUIRIES OR COMPLAINTS REFERRED TO THE BAR BY MEMBERS OF THE JUDICIARY

(a) Definitions. Wherever used in this rule, the following words or terms have the following meaning:

(1) *Disposition.* A disposition of an inquiry or complaint is the termination of an inquiry or complaint before a finding of probable cause or the filing of a formal complaint where a probable cause finding is not required. A disposition includes a:

- (A) decision not to pursue an inquiry;
- (B) dismissal of a disciplinary case;
- (C) finding of no probable cause;
- (D) finding of no probable cause with issuance of a letter of advice;
- (E) recommendation of diversion; and
- (F) recommendation of admonishment for minor misconduct.

(2) *Judicial Referral.* A judicial referral is an inquiry, communication, or complaint questioning the conduct of a member of the bar submitted to the bar by a member of the judiciary. A judicial referral also includes a court order, judgment, or opinion specifically referring to the bar a matter questioning the conduct of a member of the bar.

(b) Suspension of Deadlines for Final Disposition of Judicial Referrals. All deadlines for final disposition elsewhere in these rules are suspended under this rule. No disposition of a judicial referral will become final until the review required by this rule is complete.

(c) Review by Board of Governors. The disciplinary review committee will review all dispositions of judicial referrals first and will recommend a disposition to the board. The board may accept

or reject the recommended disposition. If the board rejects the recommended disposition, the board may:

- (1) refer the matter to a grievance committee for additional investigation or review;
- (2) find probable cause, and the case will proceed accordingly; or
- (3) recommend a different disposition to the Supreme Court of Florida.

The executive committee may act on behalf of the board or disciplinary review committee in connection with its review of dispositions of judicial referrals as specified with other disciplinary matters under these rules.

(d) Supreme Court of Florida Review. The Supreme Court of Florida may review the board's recommendation for approval of dispositions of judicial referrals.

(1) *Submission of Summary Report and Documents.* The bar will submit the board's recommendations for approval of judicial referrals to the clerk of the Supreme Court of Florida as soon as practicable after the board's decision but not later than 30 days. The submission will include a summary report of the inquiry or complaint; the nature of the alleged rule violations; the board's recommended disposition; the judicial referral; any response by the respondent; applicable orders, decisions, opinions, or communications by the judge or court; and all other non-confidential documents considered by the board.

(2) *Supreme Court of Florida Actions.* The Supreme Court of Florida may take the following actions:

- (A) approve the board's recommended disposition;
- (B) reject the board's recommendation, which will be deemed a finding of probable cause and direction to the bar to file a formal complaint;

(C) refer the matter back to the board for further review, with or without a recommendation or guidance; or

(D) request that the bar provide additional information.

Added October 21, 2021, effective December 20, 2021 (SC21-653).