REINSTATEMENT MANUAL

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REINSTATEMENT MANUAL
PREFACE

This manual is intended to acquaint referees, bar counsel, and petitioners for reinstatement and their counsel with reinstatement rules and Florida Bar procedures. This manual is intended to be only a guide and a starting point for persons interested in determining the requirements of reinstatement procedures. The Florida Bar makes no warranties about its contents. Readers should consult the current Rules Regulating The Florida Bar on reinstatement before filing a petition for reinstatement. Suggestions for changes or additions to the manual may be made to: Lawyer Regulation Division Headquarters, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

I. REINSTATEMENT FOLLOWING DISCIPLINE

In general, "reinstatement proceedings are governed by the rules in effect at the time of application for reinstatement, unless the original discipline opinion otherwise provides or unless the rules at the time of disbarment otherwise provide." The Florida Bar re Kimball, 425 So. 2d 531, 533 (Fla. 1982) cited with approval in Florida Board of Bar Examiners ex rel. Higgins, 772 So. 2d 486 (Fla. 2000).

A. Authority and Governing Rules

Reinstatement

Reinstatement proceedings begin when a suspended lawyer files a petition with the Florida Supreme Court. The Florida Supreme Court appoints a referee, who files a report with the supreme court. The Rules Regulating The Florida Bar apply. R. Regulating Fla. Bar 3-7.10 specifically addresses reinstatement procedures. Only lawyers who are ineligible to practice because of a court-ordered suspension of 91 days or more or who were classified as inactive due to incapacity may be reinstated under these rules and procedures. The petitioner must have completed at least 80% of the petitioner's term of suspension before filing a petition for reinstatement under R. Regulating Fla. Bar 3-7.10(b)(1). The chief justice will not refer a petition for reinstatement to a referee for hearing unless the petitioner submits evidence that the petitioner has paid all costs and restitution assessed against the petitioner under R. Regulating Fla. Bar 3-7.10(d). Suspended lawyers must demonstrate that they have completed all elements of their rehabilitation before filing a petition for reinstatement under R. Regulating Fla. Bar 3-7.10(n)(2).

Readmission

The readmission process begins when a former Florida Bar member files an application for readmission with the Florida Board of Bar Examiners. The Rules of the Supreme Court Relating to Admissions to the Bar apply. Members are not eligible for readmission to Florida Bar membership if they have been permanently disbarred; disciplinarily revoked or resigned without leave to apply for readmission; or permanently retired from The Florida Bar.

1. *Disbarment, Disbarment on Consent, or Disciplinary Resignation or Revocation.* R. Regulating Fla. Bar 3-7.10(n) requires readmission, not reinstatement, for any former Florida Bar member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted. R. Regulating Fla. Bar 3-7.10(n) provides that a former member who has been disbarred "may be admitted again only on full compliance with the rules and regulations governing admission to the bar." Disbarred members must apply to the Florida Board of Bar Examiners for readmission and successfully pass the bar examination. Disciplinary resignation and disciplinary revocation are tantamount to disbarment and the same requirements for readmission apply. R. Regulating Fla. Bar 3-5.1(g).

2. *Delinquency.* Members who have been delinquent for a period of 5 years or longer will not be reinstated and instead must apply to the Florida Board of Bar Examiners for readmission under R. Regulating Fla. Bar 1-3.7(d).

3. *Retirement.* Members who have been retired for more than 5 years will not be reinstated and instead must apply to the Florida Board of Bar Examiners for readmission under R. Regulating Fla. Bar 1-3.7(d).

B. Form of Petition

Petitions for reinstatement filed under R. Regulating Fla. Bar 3-7.10 are filed with the Florida Supreme Court in the form prescribed by subdivisions (b) and (*l*) and must be accompanied by a written authorization to the District Director of the Internal Revenue Service allowing release of the petitioner's tax returns for the past 5 years or since admission to the bar, whichever is greater. The petitioner must file the petition for reinstatement electronically through the Florida Courts E-Filing Portal and serve staff counsel at psavitz@floridabar.org. The petition must comply with Florida Rules of Civil Procedure and Florida Rules of General Practice and Judicial Administration. The petitioner must also attach a copy of all disciplinary judgments previously entered against the petitioner. The petitioner must pay a $500 cost deposit to The Florida Bar's Lawyer Regulation Division Headquarters in Tallahassee. A sample petition is attached as Appendix A.

C. Procedure Once Petition is Filed

The Chief Justice of the Florida Supreme Court will appoint a referee only after the petitioner provides evidence that the petitioner has paid all costs in all prior disciplinary or incapacity proceedings and has made all restitution ordered under R. Regulating Fla. Bar 3-7.10(d). A sample letter from Lawyer Regulation Division Headquarters acknowledging receipt of the cost deposit and all disciplinary costs is attached as Appendix B.

Bar staff will publish notice of the reinstatement petition and provide copies of the petition to local board members, local grievance committees, local bar association presidents, and other persons who may be particularly interested in the proceedings. Interested persons should direct any comments about the petitioner to the appointed bar counsel.

The referee to whom the petition for reinstatement is referred conducts a hearing in the same manner as a disciplinary trial unless the bar stipulates to the petitioner's reinstatement to membership in good standing. The referee must determine the fitness of the lawyer to resume the practice of law. Any persons to whom notice is given, any other interested persons, or any local bar association may appear before the referee to support or oppose the petition at any hearings. The referee's findings should relate to matters tending to show petitioner's rehabilitation and present fitness to resume the practice of law.

The burden of proof is on the petitioner who must establish rehabilitation and current fitness to practice law in order to be reinstated. The Florida

Bar re Cohen, 560 So. 2d 785 (Fla. 1990); The Florida Bar re Wolf, 21 So. 3d 15, 16 (Fla. 2009) ("A petitioner seeking reinstatement to The Florida Bar must establish by clear and convincing evidence that he has met the criteria set forth in Rule Regulating the Florida Bar 3-7.10, 'Reinstatement and Readmission Procedures,' and the decisions of this Court."). The petitioner for reinstatement must sustain the burden of proving the fitness in terms of integrity as well as professional competency. The evidence presented must be clear and convincing. In determining the fitness of the petitioner to resume the privilege of practicing law, emphasis is placed on the protection of the public and The Florida Bar. The petitioner must establish conduct to justify the restored confidence of the public, the restored confidence of petitioner's professional contemporaries, and the restored confidence of the Florida Supreme Court. In re Dawson, 131 So. 2d 472 (Fla. 1961). See also, The Florida Bar ex rel. McGraw, 903 So.2d 905 (Fla. 2005) quoting Dawson at 474 ("In the ultimate, we will look to the evidence in each case to ascertain whether it supports a conclusion that the errant lawyer has so conducted himself personally ... to justify a conclusion that he has repented of his misdoings, that the disciplinary order has impressed him with the vital importance of ethical conduct in the practice of law, and that he is morally equipped to resume a position of honor and trust among the ethical practitioners at the Bar. This is the pattern which an applicant for reinstatement must fit.")

"Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society." R. Regulating Fla. Bar 3-7.10(f)(3). The essential elements of proof for reinstatement vary with the particular case depending on the nature of the offense. The petitioner must show by clear and convincing evidence that the petitioner is rehabilitated, which includes but is not limited to the following basic elements:

1. strict compliance with the disciplinary order;

2. unimpeachable character and moral standing in the community;

3. good reputation for professional ability;

4. lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary proceedings;

5. personal assurances, supported by corroborating evidence, of repentance and a desire and intention of the petitioner to engage in exemplary conduct in the future;

6. restitution of funds or property, where applicable; and

7. sufficient personal community conduct to justify a conclusion that:

   (a) the petitioner has repented of misdoings;

   (b) the disciplinary order has impressed the petitioner with the vital importance of ethical conduct in the practice of law; and

   (c) the petitioner is morally equipped to resume a position of honor and trust among the ethical practitioners at the bar. In re Dawson, 131 So. 2d 472 (Fla. 1961); In re Timson, 301 So. 2d 448 (Fla. 1974); The Florida Bar re Whitlock, 511 So.2d 524 (Fla. 1987); The Florida Bar re Grusmark, 662 So. 2d 1235 (Fla. 1995); The Florida Bar ex rel. Wolfe, 767 So. 2d 1174 (Fla. 2000).

Regarding personal community conduct, R. Regulating Fla. Bar 3-7.10(f)(3)(G) defines community or civic service as "donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions"). In Florida Board of Bar Examiners re M.L.B., 766 So.2d 994, 998-999 (Fla. 2000), the Florida Supreme Court stated "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." The Florida Supreme Court has denied reinstatement where the petitioner has provided no community service during the period of suspension. See, The Florida Bar v. Tauler, 837 So. 2d 413 (Fla. 2003); The Florida Bar v. Juan Baraque, 43 So. 3d 691 (Fla. 2010).

If a petitioner has been ineligible to practice for a period of 3 years or longer due to a suspension, the petitioner must demonstrate an effort to remain current with changes and developments in the law by attending a minimum of 10 hours of continuing legal education (CLE) per year. R. Regulating Fla. Bar 3-7.10(f)(4)(A). Practical experience can also be

considered. Petitioners ineligible for 5 years or longer must pass the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Exam (MPRE). R. Regulating Fla. Bar 3-7.10(f)(4)(B).

D. Investigation by Bar Counsel

Once the petitioner has served the petition for reinstatement on The Florida Bar, bar counsel will be assigned and will file a Notice of Appearance. Bar counsel investigating a petitioner for reinstatement will, among other things, follow the following procedures:

- provide copies of the petition for reinstatement to local board members and board members where the original disciplinary case was processed if different from the reinstatement proceedings;
- provide copies of the petition to local grievance committees and the grievance committee that processed the original disciplinary case in the area where the misconduct occurred;
- provide copies of the petition to local bar association presidents;
- contact and interview complainants in the original disciplinary case (through their counsel if applicable);
- determine whether courts and former clients received notice from the petitioner regarding the suspension;
- review the petitioner's community or civic service performed during suspension, generally a minimum of 50 hours;
- contact employers and ascertain compliance with R. Regulating Fla. Bar 3-6.1;
- contact any persons involved with the petitioner in civil litigation;
- in a criminal case, determine whether the petitioner's civil rights are restored and interview the judge, prosecutor, victims, and probation officers;

- publish notice of the proceedings in the area where the original case was processed and The Florida Bar *News* and local newspapers including the facts of the misconduct in the underlying suspension, the discipline imposed, any terms of probation, and a request that anyone with comments notify the bar; and

- determine whether the petitioner's law practice was properly closed, whether the petitioner practiced law while suspended, and whether the petitioner obtained any legal fees improperly.

Bar counsel may request that a staff investigator investigate concerning the petitioner's activities since suspension.

E. Hearing on Petition for Reinstatement

Bar counsel may state on the record the bar's efforts to investigate the petitioner's fitness and any reasons for opposing the petition, including the gravity of the misconduct leading to the suspension or the short duration between the suspension and the petition for reinstatement.

At the conclusion of the hearing on the petitioner's fitness to resume the practice of law, the referee will file with the Florida Supreme Court a report that includes findings of fact and a recommendation of whether the petitioner is qualified to resume the practice of law. R. Regulating Fla. Bar 3-7.10(h). Either party may seek review of the referee's report. R. Regulating Fla. Bar 3-7.10(i) and 3-7.7. If the Florida Supreme Court finds the petitioner is fit to resume the practice of law, the Court will issue an order reinstating the petitioner to the practice of law in Florida. R. Regulating Fla. Bar 3-7.10(j). The order may condition reinstatement on the payment of costs, the payment of restitution to parties harmed by the petitioner's misconduct, or other conditions the Florida Supreme Court deems appropriate. See e.g., The Florida Bar re Kimball, 425 So.2d 531 (Fla. 1982).

The Florida Supreme Court will not consider a petition for reinstatement if filed within 1 year following an adverse judgment on a previous petition for reinstatement under R. Regulating Fla. Bar 3-7.10(k).

II. REINSTATEMENT FOLLOWING INCAPACITY

The Florida Bar has authority over the reinstatement of lawyers classified as inactive due to incapacity as provided in R. Regulating Fla. Bar 3-7.13. Proceedings for reinstatement for placement on the inactive list for

incapacity are under R. Regulating Fla. Bar 3-7.10. A petitioner who has had a petition for reinstatement denied may not file another petition within 6 months of the adverse judgment. R. Regulating Fla. Bar 3-7.10(k).

III. SUMMARY PROCEDURES FOR UNCONTESTED REINSTATEMENT

R. Regulating Fla. Bar 3-7.10(g)(4) allows for expedited uncontested reinstatement cases. It enables bar counsel to stipulate to reinstatement, but only after completing discovery and other due diligence to confirm that no evidence exists on which denial of reinstatement may be based. Therefore, bar counsel should not determine whether summary procedures are appropriate until after completing a thorough investigation. Bar counsel must also gain the approval of the designated reviewer and staff counsel, via a consent judgment memo that details the results of the investigation, before stipulating to the reinstatement, including any conditions. The stipulation, the bar's motion to assess costs, and affidavit of costs must be filed with the referee under R. Regulating Fla. Bar 3-7.6(q)(5). Bar staff also prepares and files with the referee a proposed report of referee and agreed proposed order on reinstatement.

APPENDIX A

SAMPLE PETITION

The following is provided to offer guidance in the preparation of a petition for reinstatement, but is not all inclusive. Individual petitions may require more or different information

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, Supreme Court Case

RE: _____, No. SC_____

Petitioner.

_____/

PETITION FOR REINSTATEMENT

[NAME OF PETITIONER], [OPTIONAL IF REPRESENTED: by undersigned counsel] respectfully files this petition for reinstatement to membership in good standing in The Florida Bar (the bar) under R. Regulating Fla. Bar 3-7.10.

Attached as exhibits are true copies of all disciplinary judgments previously entered against the petitioner; proof of petitioner's remittance to the bar of $500.00 as a deposit for costs in this matter; and proof of payment of all disciplinary costs assessed against the petitioner [attach a letter from the The Florida Bar's Cost Coordinator acknowledging payment – See Appendix C].

The petitioner certifies that the petitioner has provided to the bar authorization to the District Director of the Internal Revenue Service for release of petitioner's federal income tax returns since the petitioner's admission to the bar.

The petitioner provides the following information under R. Regulating Fla.

Bar 3-7.10.

1. name, age, address, dependents

2. date of suspension and offense

3. name(s) and addresses of complainant(s) and referee(s) in all disciplinary proceedings

4. occupation since the suspension, names and addresses of employers, dates, and duration of employment

5. monthly income and other earnings

6. residence(s), with name(s) and address(es) of landlord(s) since the suspension

7. financial obligations and creditors (including judgments)

8. statement of restitution to former clients

9. record of arrests and prosecutions

10. applications for licenses requiring proof of good character

11. proceedings involving the petitioner's standing as a member of any organization or as a license holder since the suspension

12. proceedings or charges involving claims of fraud since the suspension

13. grounds for reinstatement (Petition of Wolf, 257 So.2d 547 (Fla. 1972); The Florida Bar ex rel. McGraw, 903 So.2d 905 (Fla. 2005); The Florida Bar re Wolf, 21 So. 3d 15 (Fla. 2009).)

14. all civil actions in which the petitioner is or was a party since the suspension; and

15. community service provided during the suspension.

Petitioner respectfully requests that he/she be reinstated as a member in good standing of The Florida Bar.

_____
(Petitioner)

The above petition was acknowledged before me this ____ day of _____, by _____, who is personally known to me or who has produced _____ as identification.

_____
Notary Public

The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.floridabar.org

APPENDIX B

Date

(Petitioner/Counsel for Petitioner)
_____(Address)
_____
Re: The Florida Bar v. _____
TFB File No. _____

Dear _____:

The Florida Bar's records show that your client has paid all requisite costs and submitted the affidavit required by R. Regulating Fla. Bar 3-5.1(h). Therefore, your client's file with this office has been closed.

Please do not hesitate to contact me at (850) 561-3186 should you have any further questions.

Sincerely,

Lisa Chason

Lisa Chason, Compliance Coordinator
Lawyer Regulation Headquarters