

3-7.1 | PROCEDURES - 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 in which a finding of minor misconduct has been entered by action of the grievance committee or board is public information.

(3) *Probable Cause Cases.* Any disciplinary case in which a finding of probable cause for further disciplinary proceedings has been entered is public information. For purposes of this subdivision a finding of probable cause is deemed in those cases authorized by rule 3-3.2(a), for the filing of a formal complaint without the requirement of a finding of probable cause.

(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 Program.* Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation program is public information on the entry of such a recommendation.

(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, and/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, the fact 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 pursuant to 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, pursuant to 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 upon 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 confidentiality of the records 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 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 attorney who sought the treatment.

For purposes of this subdivision, a lawyer is deemed to have voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems if the lawyer 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 to voluntarily seek advice, counsel, and treatment available to lawyers, without fear that the fact it is sought or rendered will or might cause embarrassment in any future disciplinary matter.



(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. Upon 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. 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 such documents or information contain material that is exempt from disclosure under applicable rule or law and to request that such 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.



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