

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 of 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.

(1) 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).)

