



RULES REGULATING THE FLORIDA BAR SUBCHAPTER 3-7: PROCEDURES

{LAST UPDATE: 7/27/2020}

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RULES REGULATING THE FLORIDA BAR

CHAPTER: 3 RULES OF DISCIPLINE

SECTION: 7 PROCEDURES

RULES: 3-7.1 through 3-7.17



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.

(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).)



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).)



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

(a) Screening of Inquiries. Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. 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, with the consent of the complainant and respondent, refer the matter to The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14. 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, bar counsel may decline to pursue the inquiry. A decision by bar counsel not to pursue an inquiry shall not preclude further action or review under the Rules Regulating The Florida Bar. The complainant and respondent shall be notified of a decision not to pursue an inquiry and shall be given the reasons therefor.

(b) Complaint Processing and Bar Counsel Investigation. If bar counsel decides to pursue an inquiry, a disciplinary file shall be opened and the inquiry shall be considered as a complaint, if the form requirement of subdivision (c) is met. Bar counsel shall investigate the allegations contained in the complaint.

(c) Form for Complaints. All complaints, except those initiated by The Florida Bar, shall be in writing and under oath. The complaint shall 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, after complete investigation, bar counsel determines that the facts show that the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel shall not preclude further action or review under the Rules Regulating The Florida Bar. Nothing in these rules shall preclude bar counsel from obtaining the concurrence of the grievance committee chair on the dismissal of a case or on dismissal of the case with issuance of a letter of advice as described elsewhere in these Rules Regulating The Florida Bar. If a disciplinary case is dismissed, the complainant shall be notified of the dismissal and shall be given the reasons therefor.

(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 that 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. When bar counsel does not pursue an inquiry or dismisses a disciplinary case, such action shall be deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become public information.

(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).)

3-7.4 | GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. When notice of a grievance committee hearing is sent to the respondent, such notice shall be accompanied by a list of the grievance committee members.

(b) Complaint Filed With Grievance Committee. A complaint received by a committee direct from a complainant shall be reported 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 shall 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 upon a written complaint or not.

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

(e) No Delay for Civil or Criminal Proceedings. An investigation shall not be deferred or suspended without the approval of the board even though the respondent is made a party to civil litigation or is a defendant or is acquitted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation.

(f) Counsel and Investigators. Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investigation. Bar counsel shall assist each grievance committee in carrying out its investigative and administrative duties and shall 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, shall constitute a quorum.

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

(3) *Vote.* All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members. There shall be 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 shall 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. At a reasonable time before any finding of probable cause or minor misconduct is made, the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given 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. Unless it is found to be impractical by the chair of the grievance committee due to unreasonable delay or other good cause, the complainant shall be granted the right to be present at any grievance committee hearing when the respondent is present before the committee. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution, will excuse the completion of an investigation. The complaining witness shall have 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 that 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 shall 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 shall not preclude the reopening of the case and further proceedings therein.

(4) Disposition of Committee Files. Upon the termination of the grievance committee's investigation, the committee's file shall be forwarded to bar counsel for disposition in accord with established bar policy.

(k) Letter Reports in No Probable Cause Cases. Upon a finding of no probable cause, bar counsel will submit a letter report of the no probable cause finding to the complainant, presiding member, investigating member, and the respondent, including any documentation deemed appropriate by bar counsel and 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 shall be signed by the presiding member of the committee. Letter reports and letters of advice shall not constitute a disciplinary sanction.



(1) 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 shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be approved by the member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. 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 accordingly. If bar counsel does not agree with the changes, the matter shall be 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 shall be promptly forwarded to and reviewed by staff counsel. Staff counsel shall file the formal complaint and furnish a copy to the respondent. Staff counsel shall 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 cause. A copy of the record shall 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, the grievance committee report shall be drafted by bar counsel and signed by the presiding member. 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 that the committee believes will be helpful to the board in passing upon 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 such a report. After the presiding member signs the grievance committee report, the report shall be returned to bar counsel. The report recommending an admonishment shall 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 therein, or if the designated reviewer does not present the same to the disciplinary review committee for action by the board, the report shall then be served on the respondent by bar counsel.

(n) Rejection of Admonishment. The order of admonishment shall become final unless rejected by the respondent within 15 days after service upon the respondent. If rejected by the respondent, the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of 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 shall be 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).)



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).)

3-7.6 | PROCEDURES BEFORE A REFEREE

(a) Referees.

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

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

(b) **Trial by Referee.** When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

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

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



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

(f) Nature of Proceedings.

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

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

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

(h) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance.*

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

(B) Content. The complaint shall set forth the particular act or acts of conduct for which the attorney 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 shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the

respondent must be filed within 20 days of service of a copy of the complaint.

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

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

(5) *Filing and Service of Pleadings*.

(A) Prior to Appointment of Referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made.

On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

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

(6) *Amendment*. Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

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

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

(i) Notice of Final Hearing. The cause may be set down for trial by either party or the referee upon not less than 10 days' notice. The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent's answer, or if no answer is filed, then from the date when such answer is due.

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

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding, and shall have no rights other than those of any other witness. However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the referee may grant the complaining witness the right to be present at any hearing when the respondent is also present. A complaining witness may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial. The complaining witness shall have no right to appeal.

(l) Parol Evidence. Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract

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

(m) Referee's Report.

(1) *Contents of Report.* Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

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

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

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

(D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

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

(2) *Filing.* The referee's report and record of proceedings shall in all cases be transmitted together to the Supreme Court of Florida. Copies of the report shall be served on the parties including staff counsel.

Bar counsel will make a copy of the record, as furnished, available to other parties on request and payment of the actual costs of reproduction. The report of referee and record shall not be filed until the time for filing a motion to assess costs has expired and no motion has been filed or, if the motion was timely filed, until the motion has been considered and a ruling entered.

(n) The Record.

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

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

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

(4) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

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

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

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

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

(4) *Procedure.* Except as herein provided, all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

(p) Cost of Review or Reproduction.

(1) The charge for reproduction, when photocopying or other reproduction is performed by the bar, for the purposes of these rules shall be as 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 possession of the bar, the bar may decline to reproduce the documents in the offices of the bar and shall inform the requesting person of the following options:

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

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

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

(q) Costs.

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

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

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

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

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

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

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

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

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

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



the bar in the event that there was no justiciable issue of either law or fact raised by the bar.

(5) *Time for Filing Motion to Assess Costs.* A party shall 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. Failure to timely file a motion, without good cause, shall be considered as a waiver of the right to request reimbursement of costs or to object to a request for reimbursement of costs. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Because costs may not be assessed against the respondent unless the bar is successful in some part and because costs may not be assessed against the bar unless the referee finds the lack of a justiciable issue of law or fact, this subdivision shall not be construed to require the filing of a motion to assess costs before the referee when doing so is not appropriate.

(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).)

Court Comments

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.

Comments

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



3-7.7 | PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court of Florida in the following manner:

(a) Right of Review.

(1) Any party to a proceeding may procure review of a report of a referee or a judgment, or any specified portion thereof, entered under these rules.

(2) The Supreme Court of Florida shall review all reports and judgments of referees recommending probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings.

(3) A referee's report that does not recommend probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings, shall be 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. Review by the Supreme Court of Florida shall be in accordance with the following procedures:

(1) *Notice of Intent to Seek Review of Report of Referee.* A party to a bar disciplinary proceeding wishing to seek review of a report of referee shall give notice of such intent within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida. Prompt written notice of the board's action, if any, shall be communicated to the respondent. The proceeding shall be commenced by filing with the Supreme Court of Florida notice of intent to seek review of a report of referee, specifying those portions of the report of a referee sought to be reviewed. Within 20 days after service of such notice of intent to seek review, the opposing party may file a cross-notice for review specifying any additional portion of the report that said party desires to be reviewed. The filing of such notice or cross-notice shall be jurisdictional as to a review to be procured as a matter of right, but the

court may, in its discretion, consider a late-filed notice or cross-notice upon a showing of good cause.

(2) *Record on Review.* The report and record filed by the referee shall constitute the record on review. If hearings were held at which testimony was heard, but no transcripts thereof were filed in the matter, the party seeking review shall order preparation of all such transcripts, file the original thereof 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 shall be responsible for, and pay directly to the court reporter, the cost of preparation of transcripts. Failure to timely file and serve all of such transcripts may be cause for dismissal of the party's petition for review.

(3) *Briefs.* The party first seeking review shall 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 shall file an answer brief within 20 days after the service of the initial brief of the party seeking review, which answer brief shall 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, shall be served within 20 days thereafter. 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 shall follow the requirements of Fla. R. App. P 9.210.

(4) *Oral Argument.* Request for oral argument may be filed in any case wherein 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.* Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified.

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

(A) Authority. After review, the Supreme Court of Florida shall enter an appropriate order or judgment. If no review is sought of a report of a referee entered under the rules and filed in the court, the findings of fact shall be deemed conclusive and the disciplinary measure recommended by the referee shall be the disciplinary measure imposed by the court, unless the court directs the parties to submit briefs or oral argument directed to the suitability of the disciplinary measure recommended by the referee. A referee's report that becomes final when no review has been timely filed shall be reported in an order of the Supreme Court of Florida.

(B) Form. The judgment of the court shall include, where appropriate, judgment in favor of:

(i) the party to whom costs are awarded;

(ii) the person(s) to whom restitution is ordered; or

(iii) the person(s) 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 supreme court, upon 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 supreme court, upon review, finds the respondent not guilty of any rule violation. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Failure to timely file a petition for costs or to timely serve an objection, without good cause, shall be considered a waiver of 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 motion shall be remanded to



the referee. Upon remand, the referee shall file a supplemental report that shall include 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 shall 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 shall be made to the Supreme Court of Florida.

(f) Florida Rules of Appellate Procedure. To the extent necessary to implement this rule and if not inconsistent herewith, the Florida Rules of Appellate Procedure shall be applicable to notices of intent to seek review in disciplinary proceedings, provided service on The Florida Bar shall be accomplished by service on bar counsel and staff counsel.

(g) Contempt by Respondent. Whenever it is alleged that a respondent is in contempt in a disciplinary proceeding, a petition for an order to show cause why the respondent should not be held in contempt and the proceedings on such petition may be filed in and determined by the Supreme Court of Florida or as provided under rule 3-7.11(f).

(h) Pending Disciplinary Cases. If disbarment or disciplinary revocation is ordered by the court, dismissal without prejudice of other pending cases against the respondent may be ordered in the court's disbarment or disciplinary revocation order.

(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).)

Comments

Subdivision (c)(7) of this rule applies to situations which arise when a referee finds a respondent not guilty but the supreme court, on review, finds the respondent guilty and does not remand the case back 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 supreme court on review of the referee's report and recommendation



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).)

3-7.9 | CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. If before a formal complaint is filed a respondent states a desire to plead guilty, bar counsel shall consult established board guidelines for discipline and confer with the designated reviewer. If bar counsel or the designated reviewer rejects the proposed consent judgment, the matter shall not be referred to the board of governors. If bar counsel and the designated reviewer approve the proposed consent judgment, the respondent shall be advised that bar counsel and the designated reviewer will recommend approval of the respondent's written plea, and the matter shall be placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel shall notify the respondent and file all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel shall prepare and file 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 shall consult established board guidelines for discipline and confer with the designated reviewer. If staff counsel or the designated reviewer rejects the proposed consent judgment, the plea shall not be filed with the referee. If staff counsel and the designated reviewer approve the proposed consent judgment, the respondent shall be advised that staff counsel and the designated reviewer will recommend approval of the respondent's written plea and the consent judgment shall be filed with the referee. If the referee accepts the consent judgment, the referee shall enter a report and file same with the court as provided elsewhere in these rules. If the referee rejects the consent judgment, the matter shall proceed as provided in this chapter.

(c) Approval of Consent Judgments. Acceptance of any proposed consent judgment shall be 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 shall 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 shall 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 shall 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 shall have the same effect as, and shall be governed by, the same rules provided for disbarment elsewhere in these Rules Regulating The Florida Bar.

Matters involving disbarment on consent shall be processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these Rules Regulating The Florida Bar, 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 such event, the disbarment on consent shall set forth a brief recitation of the allegations underlying the disbarment on consent. This option shall only be 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 designated reviewer shall consider and express a recommendation on whether the consent judgment shall include revocation of certification if held by the attorney and restrictions to be placed on recertification in such areas. 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).)



3-7.10 | REINSTATEMENT AND READMISSION PROCEDURES

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

(b) Petitions; Form and Contents.

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

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

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

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

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

(f) Determination of Fitness by Referee Hearing. The referee to whom the petition for reinstatement is referred must conduct the hearing as a trial, in the same manner, to the extent practical, as provided elsewhere in these rules. The referee must decide the fitness of the petitioner to resume the practice of law. In making this determination, the referee will consider whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated, as further described in this subdivision. All conduct engaged in after the date of admission to The Florida Bar is relevant in proceedings under this rule.

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

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

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

(A) age at the time of the conduct;

(B) recency of the conduct;

(C) reliability of the information concerning the conduct;

(D) seriousness of the conduct;

(E) factors underlying the conduct;

(F) cumulative effect of the conduct or information;

(G) evidence of rehabilitation;

(H) positive social contributions since the conduct;

(I) candor in the discipline and reinstatement processes; and

(J) materiality of any omissions or misrepresentations.

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

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

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

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

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

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

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

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

The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for admission to the bar because service to one's community is an essential obligation of members of the bar.

(4) Educational Requirements.

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

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

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

(B) A petitioner who has been ineligible to practice for 5 years or more will not be reinstated under this rule until the petitioner has re-taken and provided proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE). A petitioner must have proof of passing all these required portions of the bar examination before that petitioner may file a petition for reinstatement under this subdivision.

(g) Hearing; Notice; Evidence.

(1) *Notice.* The referee to whom the petition for reinstatement is referred will fix a time and place for hearing, and notice of the hearing will be provided at least 10 days prior to the hearing to the petitioner, to



lawyers representing The Florida Bar, and to other persons who may be designated by the appointed referee.

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

(3) *Failure of Petitioner to be Examined.* For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the referee will dismiss the petition for reinstatement unless good cause is shown for the failure.

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

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

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

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

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

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

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

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

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

Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

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

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

(B) the conduct, offense, or misconduct on which the suspension or incapacity was based, together with the date of such 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 financial obligations of the petitioner including, but not limited to, amounts claimed, unpaid, or owing to The Florida Bar Clients' Security Fund or former clients at the date of filing of the petition, together with the names and addresses of all creditors;

(H) a statement of restitution made for any and all obligations to all former clients and the Florida Bar Clients' Security Fund and the source and amount of funds used for this purpose;

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

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

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

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

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

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

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

(4) *Comments on Petition.* On the appointment of a referee and bar counsel, copies of the petition will be furnished by the bar counsel to local board members, local grievance committees, and to other persons mentioned in this rule. Persons or groups that wish to respond must direct their comments to bar counsel. The proceedings and finding of the referee will relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of the proposed reinstatement on the administration of justice and purity of the courts and confidence of the public in the profession.

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

(m) Costs.

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

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

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;



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

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

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

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

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

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

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

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

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



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

(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).)

Comments

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).

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).)



3-7.12 | DISCIPLINARY REVOCATION OF ADMISSION TO THE FLORIDA BAR

If a disciplinary agency is investigating the conduct of a lawyer, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and a petition for disciplinary revocation may be filed pursuant to this rule. Disciplinary revocation is tantamount to disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. A lawyer may seek disciplinary revocation of admission to The Florida Bar during the progress of disciplinary proceedings in the following manner:

(a) Petition for Disciplinary Revocation. The petition for disciplinary revocation shall be styled "In re(respondent's name)....," titled "Petition for Disciplinary Revocation," filed with the Supreme Court of Florida and shall contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. The statement shall 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 shall state whether it is with or without leave to apply for readmission to the bar. A copy of the petition shall be served upon the executive director of The Florida Bar.

(b) Judgment. Within 60 days after filing and service of the petition, The Florida Bar shall file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary revocation. The bar's response shall be determined by the bar's board of governors. A copy of the response shall be served upon the petitioner. The Supreme Court of Florida shall 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 the public interest will not be adversely affected by the granting of the petition and that such will neither adversely affect the integrity of the courts nor hinder the administration of justice nor the confidence of the public in the legal profession. If otherwise, the petition shall be denied. If the judgment grants the disciplinary revocation, the judgment may require that the disciplinary revocation be subject to appropriate conditions.



Such conditions may include, but shall not be limited to, requiring the petitioner to submit to a full audit of all client trust accounts, to execute a financial affidavit attesting to current personal and professional financial circumstances, and to maintain a current mailing address with the bar for a period of 5 years after the disciplinary revocation becomes final or such other time as the court may order.

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

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

(e) 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. Such costs shall be of the types and amounts authorized elsewhere in these Rules Regulating The Florida Bar.

(Added April 12, 2012, effective July 1, 2012 (101 So.3d 807))

(Disciplinary Resignation from the Florida Bar Sunsetting 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.)

Comments

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 such petitions 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 revoked pursuant to disciplinary revocation still 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).

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).)



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).)



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).)



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 which 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 in accordance with 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.)



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.

(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).)

Comments

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).



APPENDIX



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