



THE FLORIDA BAR

REFEREE MANUAL

Revised: August 2024



THE FLORIDA BAR

DIRECTORY OF BRANCH OFFICES

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MEMORANDUM

TO: Referees
FROM: John A. Tomasino, Clerk
RE: Guide For Referees In Disciplinary Cases

1. PURPOSE

The purpose of this guide is to give you, in condensed form, the information you may find helpful to perform your duties as referee.

Before a judge may be appointed as a referee, the judge must have previously served as a judicial referee or reviewed referee training materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed under Rule Regulating Fla. Bar 3-7.6(a)(2). A sample form for this purpose is attached at the conclusion of these materials. This guide is part of those training materials. In addition, referees are required to prepare an index of the record and certify that the record is complete. Pursuant to Rule 3-7.6(n)(3), bar counsel must assist the referee with the preparation of the index. The updated Rules Regulating The Florida Bar can be found at <http://www.floridabar.org>.

This guide is designed to summarize trials by referees in disciplinary proceedings. It is not all-inclusive and should not serve as a substitute for an understanding of the basic rules and law concerning disciplinary cases.

A review of the following material may assist you in your duties:

Rules Regulating The Florida Bar

Chapter 1 – General

Chapter 3 – Rules of Discipline

Chapter 4 – Rules of Professional Conduct

Chapter 5 – Rules Regulating Trust Accounts

Citations to “Rule xxx” in this document are to the Rules Regulating The Florida Bar. The Rules Regulating The Florida Bar may be accessed at <https://www.floridabar.org/rules/rtrfb/>.

The appropriate case law that may be found is under the heading of Attorney/Client in the Florida Digest.

2. JURISDICTION

Article V, Section 15 of the Florida Constitution gives the Supreme Court of Florida exclusive jurisdiction to regulate the admission of persons to practice law and the discipline of persons so admitted.

The Supreme Court of Florida's regulation of The Florida Bar is carried out through the Rules Regulating The Florida Bar, which establish the bar as an official arm of the Court. The referee is appointed by the circuit court's chief judge by order of the Supreme Court of Florida. See Rule 3-7.6(a)(1); see also *Petition of Florida State Bar Ass'n*, 40 So. 2d 902 (Fla. 1949); *Lewis v. The Florida Bar*, 372 So. 2d 1121, 1122 (Fla. 1979); *Dacy v. Florida Bar, Inc.*, 414 F.2d 195 (5th Cir. 1969), cert. den., 397 U.S. 909; *Pantori, Inc. v. Stephenson*, 384 So. 2d 1357 (Fla. 5th DCA 1980).

3. PROCEEDINGS BEFORE CASE IS REFERRED TO REFEREE

(a) FINDING OF PROBABLE CAUSE BY GRIEVANCE COMMITTEE OR BOARD OF GOVERNORS

Normally, before a case is referred to a referee for trial, there must first be a finding by a grievance committee, or by the Board of Governors of The Florida Bar, that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action. One exception is when the respondent fails to timely file a rejection of an admonishment order. See Rule 3-7.4(n). Other exceptions are listed in Rule 3-3.2(b) and include emergency suspension, felony determination or adjudication, felony charges, discipline in another jurisdiction, and action by the Judicial Qualifications Commission.

The types of misconduct justifying disciplinary action are described in the Rules of Discipline, the Rules of Professional Conduct, and the Rules Regulating Trust Accounts.

Please note that the Rules of Professional Conduct not only contain substantive rules, but also have comments intended to explain those rules.

(1) BOARD OF GOVERNORS

The Board of Governors of The Florida Bar, on the basis of any report of a grievance committee, may by majority vote find probable cause and direct the filing of a formal complaint against a respondent. See Rules 3-3.2 and 3-7.5(c).

(2) GRIEVANCE COMMITTEES

There are over 80 grievance committees in Florida, including the Statewide Advertising Grievance Committee, which considers only advertising complaints. Each grievance committee is composed of lawyers and non-lawyers. At least one-third of the committee membership must be non-lawyers. The lawyer members must have been members of The Florida Bar for at least 5 years. See Rule 3-3.4(c).

The purpose of the grievance committee is to conduct investigations into allegations of misconduct by Florida attorneys. See Rules 3-3.4 and 3-7.4.

The grievance committee does not decide whether the lawyer is guilty. It investigates and makes findings as to whether there is PROBABLE CAUSE to warrant further disciplinary action. In many respects, the grievance committee is like a grand jury.

Proceedings before the grievance committees are informal and non-adversarial. Technical rules of evidence do not apply to grievance committee proceedings. See Rule 3-7.4(d).

If a grievance committee or the Board of Governors of The Florida Bar finds probable cause, bar counsel prepares a complaint for filing with the Supreme Court of Florida. See Rule 3-7.4(1).

(3) PROBABLE CAUSE

Probable Cause is defined as:

A finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action. See Rule 3-2.1(n).

4. TRIAL BY REFEREE

(a) PROCEDURES

Bar counsel and staff counsel prepare and file a complaint with the Supreme Court of Florida under the above procedures. The chief justice then appoints a circuit or county court judge as referee, or delegates this function to the chief judge of a judicial circuit. See Rule 3-7.6(a). To be eligible for appointment as a referee, the judge must previously have served as a judicial referee in a bar disciplinary proceeding before February 1, 2010, 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. See Rule 3-7.6(a)(2). It is recommended, but not required, that the referee's judicial assistant review the training materials as well.

A trial by referee is similar, in many respects, to a non-jury civil trial. The proceeding is neither civil nor criminal, but is a quasi-judicial administrative proceeding. Discovery and the Rules of Civil Procedure apply except as otherwise provided. See Rule 3-7.6(f)(1) and (2). Civil mediation is not available in bar disciplinary proceedings. In all cases, the referee must require the parties to appear at a case management conference within 60 days of appointment. The referee then must issue a pretrial order reciting the action taken at the conference. See Rule 3-7.6(c).

The referee is not bound by technical rules of evidence. Hearsay evidence is admissible and there is no right to confront witnesses. See *The Fla. Bar v. Maynard*, 672 So. 2d 530 (Fla. 1996), *The Fla. Bar v. Vannier*, 498 So. 2d 896 (Fla. 1986); *The Fla. Bar v. Dawson*, 111 So. 2d 427, 431 (Fla. 1959).

The respondent and other witnesses may be subpoenaed and required to testify unless they have a privilege or right properly available to them under federal or state law. Disciplinary proceedings are remedial in nature and a respondent may not properly invoke the Fifth Amendment because of potential disciplinary liability alone. See *DeBock v. State*, 512 So. 2d 164 (Fla. 1987), cert. den., 484 U.S. 1025; Rule 3-7.6(j).

When a respondent has been charged with a crime, and is suspended from the practice of law, the respondent may seek a waiver of the time limits set forth under the bar rules so the criminal matter can proceed before the disciplinary case. This is at the discretion of the referee or court and is sometimes permitted so the respondent's constitutional rights in the criminal case (Fifth Amendment, limits on discovery) are not violated by having the disciplinary case proceed first. Rule 3-7.2(k) (waiver of time limits).

Subpoenas for the attendance of witnesses and production of documentary evidence are issued solely by the referee and are served in the manner provided by law for service of process. See Rule 3-7.11(d)(1). Subpoenas may not be issued by counsel as that part of the civil rules is inconsistent with the procedure for issuing subpoenas under the Rules of Discipline.

Any person who, without adequate cause, fails to obey a subpoena may be cited for contempt. See Rule 3-7.11(d)(7).

A complaining witness is not a party to a disciplinary proceeding and has no rights other than those of any other witness. See Rule 3-7.6(k).

(b) VENUE

The trial must be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever is designated by the Supreme Court of Florida. If respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial will be held in a county designated by the chief justice. See Rule 3-7.6(d).

(c) PROCESS

The bar may serve notice by certified U.S. Postal Service mail return receipt requested to a lawyer's record bar address unless the Supreme Court of Florida directs otherwise. The bar must serve and notice a lawyer's counsel if the lawyer is represented. See Rule 3-7.11(b) and (c).

(d) 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 from acting in a judicial capacity. See Rule 3-7.6(h)(8); see also Chapter 38, Fla. Stat.

(e) WEIGHT AND QUALITY OF EVIDENCE

The evidence to sustain a disciplinary decision against the respondent must be CLEAR AND CONVINCING. It is something less than beyond a reasonable doubt, as required in criminal cases and something more than a preponderance of the evidence, as required in civil cases. See The Fla. Bar v. McCain, 361 So. 2d 700, 706 (Fla. 1978); The Fla. Bar v. Rayman, 238 So. 2d 594, 598 (Fla. 1970). See also The Fla. Bar v. Berthiaume, 78 So. 3d 503, 505 & 508 (Fla. 2011).

The grievance committee record may be introduced to establish a prima facie case against the respondent if it is sufficient to sustain the charge. See *State ex rel. The Fla. Bar v. Junkin*, 89 So. 2d 481 (Fla. 1956). See also *The Fla. Bar v. Schneiderman*, 285 So. 2d 392 (Fla. 1973) (suspension was predicated on evidence contained in a grievance committee record, default at the referee trial, and proof of notice in the referee proceedings).

If a respondent fails to respond to requests for admission, the requests may be deemed admitted and the referee may make a finding of guilt based on them. See *The Fla. Bar v. Hollingsworth*, 376 So. 2d 394 (Fla. 1979).

Evidence of prior discipline is admissible against a respondent after a finding of guilt. See Rule 3-7.6(m)(2)(D).

(f) PLEADINGS

Pleadings may be informal. See Rule 3-7.6(h).

(g) INTERLOCUTORY APPEALS

Ordinarily, the Supreme Court of Florida does not entertain interlocutory questions arising in the course of proceedings under the Rules of Discipline. See *The Fla. Bar v. McCain*, 330 So. 2d 712 (Fla. 1976); *The Fla. Bar*, 329 So. 2d 301 (Fla. 1974).

5. PUBLIC NATURE OF PROCEEDINGS

Cases before a referee are public information. See Rule 3-7.1(a)(3) and 3-7.1(b).

The referee may seal portions of the record in order to preserve the confidentiality of any material provided to The Florida Bar that is confidential and must not be disclosed except as authorized by applicable law. See Rule 3-7.1(d) and (m).

6. CONSENT JUDGMENT

If a respondent desires to plead guilty after a formal complaint has been filed, staff counsel, with the approval of the member of the Board of Governors designated to review the case, may advise the respondent of the discipline the bar will recommend to the referee if a written plea of guilty is entered. See Rule 3-7.9(b).

7. TERMINATION OF PROCEEDINGS BY BOARD

The Board of Governors may terminate disciplinary proceedings before the referee before the referee receives evidence in the matter. See Rule 3-7.5(f).

8. PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS (Rule 3-5.3)

The practice and professionalism enhancement programs were developed as an alternative or addition to existing sanctions. These programs are intended to provide educational opportunities to members of The Florida Bar for enhancing skills and avoiding future misconduct.

Rule 3-5.3 specifies that only those disciplinary cases that would otherwise be disposed of by a finding of minor misconduct or by a finding of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs.

A respondent who has entered a prior diversion within 5 years is not eligible for diversion for the same type of rule violation. A respondent who has entered diversion is eligible for diversion for a completely different rule violation 1 year after the prior diversion.

(a) PROGRAMS

1. Ethics School
2. Diversion / Discipline Consultation Service
3. Florida Lawyers Assistance, Inc. (FLA, Inc.)
4. Continuing Legal Education (CLE) Seminars
5. Advertising Workshop
6. Stress Management
7. Professionalism Workshop
8. Trust Accounting Workshop

(b) DIVERSION AT TRIAL LEVEL

The parties may agree that diversion of a disciplinary case to a practice and professionalism enhancement program is an appropriate resolution to a case. Bar approval is obtained in the manner provided in Rule 3-5.3(d). Under these circumstances, a conditional guilty plea may be submitted to the referee for review and approval. See Rule 3-5.3(h)(1). Additionally, a referee may recommend diversion if, after submission of evidence but before a finding of guilt, the referee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than minor misconduct. See Rule 3-5.3(i)(2). Diversion is not a form of discipline and is not published in the Southern Reporter, The Florida Bar News, or on The Florida Bar's website, nor does the bar issue a media release regarding diversion.

(c) COSTS

All recommendations for diversion must state the costs to be paid by respondent. See Rule 3-5.3(e) and 3-5.3(i)(3). The bar periodically reviews and determines the fees of the practice and professionalism enhancement program that will be assessed against and paid by the respondent. See Rule 3-5.3(m). The current fee for most professionalism enhancement programs is \$750.00. There is an increased fee for diversion to multiple programs. Diversion/Discipline Consultation Service charges \$2,000.00 for all discipline-related cases. The respondent pays this amount directly to The Florida Bar. Continuing Legal Education costs are based on the program the respondent is required to attend. Those costs vary and are paid directly to the continuing legal education provider on registration to attend the program. FLA, Inc., costs are described below.

9. **DISCIPLINE**

The final hearing has a guilt phase and a sanctions phase. Either the bar or the respondent may request bifurcation of the proceedings. If neither requests bifurcation, evidence for both the guilt and sanction phase may be taken together in a single proceeding. If either the bar or the respondent requests bifurcation, the referee must hold the guilt phase first, and if the referee finds the respondent guilty of any rule violation, the referee must hold a separate hearing to determine the appropriate sanction. The sanction hearing may immediately follow the guilt phase or be set for a later date.

At the sanction hearing, the referee must consider all applicable aggravating and mitigating factors, relevant case law, and the Florida Standards for Imposing Lawyer Sanctions. The Florida Standards for Imposing Lawyer Sanctions may be accessed at <https://www.floridabar.org/rules/sanctions/>. The referee then makes a recommendation on sanctions, but the ultimate decision on the appropriate sanction lies with the Supreme Court of Florida.

When the Supreme Court of Florida has entered a judgment finding a Florida Bar member guilty of misconduct, the Supreme Court of Florida may impose one or more of the following disciplinary measures:

(a) PROBATION [Rule 3-5.1(c)]

The respondent may be placed on probation for a stated period of time between 6 months and 5 years or for an indefinite period determined by conditions stated in the order. Probation may be imposed alone or together with any other discipline recommended, including admonishment. To ensure enforceability, probationary time frames must be specific; e.g., restitution within 60 days of the Supreme Court's order. Probationary conditions may include 1 or more of the following: supervisor reports regarding respondent's client files; completion of CLE courses; Diversion / Discipline Consultation Service reviews; achieving a passing score on the ethics portion of the bar exam; reports on trust accounts by a certified public accountant; and entering into a contract with FLA, Inc. for substance misuse rehabilitation or mental health counseling. FLA, Inc. is a separate entity funded by The Florida Bar to assist Florida Bar members with substance misuse disorder or mental health issues that affect their practice of law. FLA, Inc. monitors lawyers with substance misuse disorder or mental health issues who enter rehabilitation contracts for a specified length of time either voluntarily or at the direction of the Supreme Court. The lawyer pays directly to FLA, Inc. a \$250.00 registration fee and \$100.00 monthly in monitoring fees. The lawyer also must pay an evaluation fee directly to an evaluator selected by FLA, Inc. The probation may include a condition that a finding of probable cause or a finding of minor misconduct will result in the revocation of the probation.

In cases where FLA, Inc. is not a requirement of probation, the respondent must pay to The Florida Bar a monthly or quarterly monitoring fee of \$100.00.

(b) ADMONISHMENT [Rule 3-5.1(a) and (b)]

The referee may recommend an admonishment only where minor misconduct is involved. Minor misconduct is more than a simple, isolated act of negligence that may be actionable as malpractice. See *The Fla. Bar v. Neale*, 384 So. 2d 1264 (Fla. 1980). An admonishment recommended by a referee may require the respondent to appear before the grievance committee, Board of Governors, referee, or Supreme Court of Florida for administration and is made a part of the respondent's permanent disciplinary record. See Rules 3-5.1(a) and 3-5.4(a). The Florida Bar does not issue a media release or publish information in *The Florida Bar News* about admonishments. The Supreme Court of Florida does not release admonishments for publication and labels those orders "not to be published." However, the term "Not to be Published" does not have the same meaning as "confidential." The Florida Bar posts information regarding specific orders of admonishment on its website and provides information regarding an admonishment on inquiry. See Rule 3-5.4(d).

(c) PUBLIC REPRIMAND [Rule 3-5.1(d)]

Public reprimands are reported in the *Southern Reporter* and the news media. They also may be administered by appearance before the Supreme Court of Florida, Board of Governors, referee, or any local judge as ordered by the Supreme Court of Florida. The Florida Bar publishes information in *The Florida Bar News* and on The Florida Bar's website on these cases and the Supreme Court of Florida releases these matters for publication.

(d) SUSPENSION [Rule 3-5.1(e)]

The respondent may be suspended from the practice of law for a definite period of time or an indefinite period of time (e.g., until the respondent pays restitution to a former client). A suspension for a definite period of time cannot exceed 3 years. A respondent who is suspended for more than 90 days must prove rehabilitation and may be required to prove the respondent has passed all or part of the bar exam. This means that the respondent, on completion of the specific period of suspension, must petition for reinstatement and must prove rehabilitation. See Rule 3-7.10; *Reinstatement Manual* (available on The Florida Bar's website); *Fla. Bar ex rel. McGraw*, 903 So. 2d 905 (Fla. 2005); *Petition of Wolf*, 257 So. 2d 547 (Fla. 1972); *In re Dawson*, 131 So. 2d 472 (Fla. 1961). The Florida Bar publishes information in *The Florida Bar News* and on The Florida Bar's website on these cases and the Supreme Court of Florida releases these matters for publication. All lawyers who are suspended must comply with Rule 3-5.1(h)(Notice to Clients). During suspension, the respondent continues to be a member of The Florida Bar, but without the privilege of practicing law.

(e) DISBARMENT [Rule 3-5.1(f)] and REVOCATION [Rule 3-7.12]

A judgment of disbarment terminates the respondent's status as a member of The Florida Bar. A respondent may petition directly to the Supreme Court of Florida seeking disciplinary revocation in lieu of defending against disciplinary proceedings. See Rule 3-7.12. A disciplinary revocation is tantamount to disbarment. A disbarred or revoked

lawyer may not apply for readmission for the time specified in the Supreme Court of Florida order, usually 5 years. A lawyer also may be permanently disbarred or revoked. A former member who has been disbarred or revoked may only be readmitted on full compliance with the rules and regulations governing admission to the bar. Readmission after disbarment requires application to the Florida Board of Bar Examiners. The applicant must successfully pass the bar examination in addition to other requirements imposed on all applicants to be readmitted. See Rules of the Supreme Court Relating to Admissions to the Bar. Permanently disbarred or revoked former members may not be readmitted.

(f) FORFEITURE OF FEES [Rule 3-5.1(i)]

A respondent may be ordered to forfeit all or part of a fee by order of the Supreme Court of Florida that adjudicates a respondent guilty of entering into, charging, or collecting a prohibited fee. Also, a respondent may accept a report of minor misconduct recommending forfeiture. See Rule 3-5.1(i); see also Rule 4-1.5. In the case of a clearly excessive fee, the excessive amount of the fee may be ordered returned to the client. The Supreme Court of Florida may also order that fees otherwise prohibited by the Rules Regulating The Florida Bar be forfeited to The Florida Bar Clients' Security Fund to be disbursed to victims of lawyer theft in accordance with its rules and regulations.

(g) RESTITUTION [Rule 3-5.1(j)]

A referee may recommend, and the Supreme Court of Florida may order, that a respondent pay restitution to a complainant or other person if it is found that the respondent has received an excessive, illegal, or prohibited fee or that respondent has converted trust funds or property. See Rules 3-5.1(j), 4-1.5, and 5-1.1. A respondent may agree to pay restitution as part of a consent judgment.

Restitution is appropriate in cases involving excessive fees, illegal fees, conversion of client funds, or conversion of trust property. See Rules 3-5.1(j); *The Fla. Bar v. Feige*, 937 So. 2d 605, 611 (Fla. 2006). Restitution is not used for other purposes. See *The Fla. Bar v. Smith*, 866 So. 2d 41, 49 (Fla. 2004) (the purpose of bar discipline procedures is to protect the public; disciplinary actions cannot be used as a substitute for what should be addressed in private civil actions against lawyers); *Fla. Bar v. Neale*, 384 So. 2d 1264, 1265 (Fla. 1980) (care should be taken to avoid the use of disciplinary action under the bar rules as a substitute for what is essentially a malpractice action).

(h) COSTS [Rule 3-7.6(q)]

When the bar is successful, in whole or in part in a discipline case, the referee may assess the bar's costs against the respondent. The referee may assess the respondent's costs against the bar only if the bar is unsuccessful and has raised no justiciable issue of law or fact. The bar or respondent must file a statement of costs incurred and a request for payment of the costs within 15 days after written notice by the referee that a report of referee has been completed or when a consent judgment is filed. See Rule 3-7.6(q)(5). The bar's discipline costs are a \$1,250.00 administrative fee plus actual costs as listed in Rule 3-7.6(q). The respondent is limited to taxable

costs listed in Rule 3-7.6(q)(1). Failure to timely file a motion, without good cause shown, waives the right to request reimbursement of costs or to object to a request for reimbursement of costs. The party from whom costs are sought has 10 days from the date the motion was filed in which to serve an objection. The rules do not require that a motion to assess costs before the referee be filed when doing so is not appropriate. See Rule 3-7.6(q)(5).

10. INCOMPETENCY OR INCAPACITY NOT RELATED MISCONDUCT

Where a lawyer is found to be incapable of practicing law or adjudged incompetent, the Supreme Court of Florida may place the lawyer on the inactive list for incapacity not related to misconduct even though no misconduct is alleged. Proceedings are held under the Rules of Discipline in the same manner as proceedings involving acts of misconduct. A lawyer placed on the inactive list due to incapacity is prohibited from practicing law. In order to become eligible to practice law, the lawyer must file a petition for reinstatement. See Rule 3-7.13.

11. ELECTRONIC FILING

The bar and respondent must file all documents with the referee via the Florida Courts E-Filing Portal. Service, including on the referee, must be made via the Florida Courts E-Filing Portal. Referees therefore must have active accounts in the portal as judicial officers. The bar and respondent will add the referee to the service list as another interested party to serve documents on the referee. All filings by the referee to the Supreme Court of Florida must be filed via the Florida Courts E-Filing Portal. Bar counsel will file on behalf of the referee at the referee's request.

12. REFEREE'S REPORT AND CERTIFIED INDEX OF THE RECORD

(a) REPORT OF REFEREE [Rule 3-7.6(m)]

The referee must prepare a report within 30 days after the conclusion of a trial before a referee or within 10 days after the referee receives the transcripts (if a transcript is ordered), whichever is later. See Rule 3-7.6(m)(1). The administrative order appointing the referee specifies the time period given by the Supreme Court of Florida in which to file the report of referee. It may be 180 days, 90 days, or even less in certain situations. The referee must file with the Supreme Court and provide notice to the parties that the report of referee has been completed via the Florida Courts E-Filing Portal. See Rule 3-7.6(q)(5). The report of referee must be in 14-point Arial or Bookman Old Style font.

The report of referee cannot be filed with the Supreme Court until after the time period for filing a motion to assess costs by the prevailing party and the time period for filing an objection has run. See Rule 3-7.6(q)(5).

A comprehensive report of referee under Rule 3-7.6(m) is beneficial to the Supreme Court of Florida so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The report should address each issue in the case and cite to available case law and standards, including aggravators and mitigators, to support the referee's recommendations concerning guilt and discipline.

The report of referee should set forth facts clearly. The recommendations regarding guilt and the alleged rule violations should be plainly stated and expressly linked to the factual findings that support the referee's recommendations as to guilt. These requirements apply to all referee reports, even those based on a consent judgment or stipulation. See Rule 3-7.6, Comment.

In addition to filing the report of referee through the portal, the referee must email the Word version of the report of referee to e-file@flcourts.org. The email's subject line must start with the Supreme Court of Florida case number, case name, and "Report of Referee." This e-mail address is for this purpose only. The Supreme Court of Florida Clerk's Office will not respond to e-mails sent to this address. Pleadings sent to this address will not be considered a filing.

(b) INDEX OF THE RECORD AND CERTIFICATION [Rule 3-7.6(n)]

The court requires that each report of referee be accompanied by an index of the record and the referee's certification that the record is complete. See Rule 3-7.6(n)(3). The record includes all items properly filed in the matter, including pleadings, recorded testimony if transcribed, exhibits in evidence, and the report of referee. Rule 3-7.6(n). The bar will provide the referee with the Index of Record and Certification of Record and Index for the referee to certify that the record is complete.

Correspondence should not be included in the record. If the referee wants to include correspondence as part of the record, for example, correspondence by the respondent as an aggravating factor in discipline, the referee must attach the correspondence to the report of referee as an exhibit and reference the correspondence in the report of referee.

SAMPLE PLEADINGS

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

[Name of Respondent],

Respondent.

Supreme Court Case

No. SC [Case Number]

The Florida Bar File

No. [File Number]

_____ /

CERTIFICATE BY REFEREE

I, [Name of Judge] , am a Judge in [County Name] County in the [Circuit Number] Judicial Circuit of Florida. In compliance with the Rules Regulating The Florida Bar, Rule 3-7.6, Procedures before a referee, I certify the following:

_____ I have previously served as a Judicial Referee in proceedings instituted before February 1, 2010.

_____ I have received the referee training materials approved by the Supreme Court of Florida and certify to Chief Judge [Name of Chief Judge] that I have reviewed these training materials as required.

Dated this _____ day of _____, 20____.

[Judge's name], Referee

Copies Provided via the Florida Courts E-Filing Portal to:

The Honorable [Name of Chief Judge], Chief Judge, [Circuit Number]
Judicial Circuit, [e-mail address]

[Name of Respondent or Counsel for Respondent], Respondent or Counsel
for Respondent [e-mail address]

Patricia Ann Toro Savitz, Staff Counsel, psavitz@floridabar.org

[Name of Bar Counsel], Bar Counsel, The Florida Bar, [e-mail address]

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
[Name of Respondent],
Respondent.

Supreme Court Case
No. SC [Case Number]
The Florida Bar File
No. [File Number]

_____ /

NOTICE OF HEARING

TO: _____ (Respondent)
_____ (Address)
_____ (Address)
_____ (Email)

Date: _____

Time: _____

Location: _____

PLEASE TAKE NOTICE that the above-referenced matter is set for hearing before the Honorable [JUDGE], duly appointed Referee, at the time and place above. [HOUR/HOURS HAS/HAVE] been set aside to hear [REASON FOR HEARING]. A court reporter has been reserved.

I CERTIFY that a copy of the above notice was served electronically via the Florida Courts E-filing Portal to [email addresses] on this ____ day of _____, 20____, to the above named addressee(s).

[Judge's name], Referee
[Circuit or County]
[Address]

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

[Name of Respondent],

Respondent.

Supreme Court Case

No. SC [Case Number]

The Florida Bar File

No. [File Number]

_____ /

REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**

The undersigned was duly appointed as referee to conduct disciplinary proceedings in this matter under Rule 3-7.6, Rules of Discipline. The following proceedings occurred:

On [date formal complaint filed], The Florida Bar filed its complaint against the respondent as well as its request for admissions in these proceedings. On [final hearing date], a final hearing was held in this matter. [Name of bar counsel] appeared on behalf of the bar. [Name of respondent's counsel] appeared on behalf of the respondent [or The respondent appeared pro se]. All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence, and the report of

referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

FINDINGS OF FACT

A. Jurisdictional Statement. The respondent is, and at all times relevant was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

B. Narrative Summary Of Case.

[Insert Summary of Fact]

[Note: Referee should expressly make finding of credibility regarding witnesses.]

II. RECOMMENDATIONS AS TO GUILT.

I recommend that the respondent be found guilty [or not guilty] of violating the following Rules Regulating The Florida Bar: [LIST RULES]

[Note: In this section, the recommendations must be clearly and expressly linked to the facts stated in the “Findings of Fact.”]

III. CASE LAW

I considered the following case law before recommending discipline:

[INSERT CASE LAW]

[Note: Even if the case is based on a consent judgment or stipulation, the report should present relevant case law.]

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following standards before recommending discipline:

[INSERT]

V. AGGRAVATING AND MITIGATING FACTORS

I considered the following factors before recommending discipline:

[Note: See Standards 3.2 and 3.3]

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the respondent be found guilty of misconduct justifying disciplinary measures, and that the respondent be disciplined by:

- A. [Proposed Discipline]
- B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Before recommending discipline under Rule 3-7.6(m)(1)(D), I considered the following:

A. Personal History of Respondent:

Age: [Years Old]

Date admitted to the Bar: [Date of Admission]

B. Aggravating Factors:

Prior Discipline: [List Prior Discipline here]

C. Mitigating Factors: [List any mitigating factors here]

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida

Bar:

A. Grievance Committee Level:

Court Reporter's Fees	\$
Bar Counsel Travel	\$
Investigative Costs	\$
Copies	\$
Subtotal	\$

B. Referee Level:

Administrative Costs	\$
TOTAL	\$

I recommend that the above costs be charged to the respondent, that interest at the statutory rate accrue, and that the respondent be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 20____.

[Judge's name], Referee

CERTIFICATE OF SERVICE

I CERTIFY that the original of the above Report of Referee has been filed electronically via the Florida Court's E-Filing Portal with The Honorable John A. Tomasino, Clerk, Supreme Court of Florida, and emailed to efile@flcourts.org; a copy has been served via the Florida Courts E-Filing Portal to [Name of Bar Counsel], Bar Counsel, The Florida Bar, (e-mail address); [Respondent or Respondent's Counsel], (e-mail address); and Patricia Ann Toro Savitz, Staff Counsel (psavitz@floridabar.org), this _____ day of _____, 20__.

[Judge's name]
[Circuit or County]
[Address]

[NOTE: The report must be signed and dated before being filed electronically via the Florida Courts E-Filing Portal with the Florida Supreme Court]

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
[Name of Respondent],
Respondent.

Supreme Court Case
No. SC [Case Number]
The Florida Bar File
No. [File Number]

_____ /

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

The respondent, [NAME], files this Conditional Guilty Plea for Consent Judgment under Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. The respondent is, and at all times relevant was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.

2. The respondent admits that [he/she] has violated Rules [insert rules violated], Rules of Professional Conduct by the following acts:

[Facts from complaint - single space - do not indent paragraphs]

[Note: Include clear, detailed facts and express connection between facts stated and rules violated.]

3. As an appropriate discipline for this misconduct, The respondent agrees to the imposition of [Agreed Discipline].

[Note: Case law must be cited to support the recommended sanction.]

4. The respondent acknowledges that this Conditional Guilty Plea for Consent Judgment is tendered freely, voluntarily, and without fear or threat of coercion.

5. The respondent acknowledges that the respondent has been afforded all procedural and substantive due process guarantees regarding these disciplinary proceedings, and that for the purpose of tendering this Conditional Guilty Plea for Consent Judgment, the respondent waives any procedural and substantive due process objections to these disciplinary proceedings.

6. If the Supreme Court of Florida does not approve this plea, it is of no effect and neither the plea nor the statements contained in it can be used against the respondent in any way.

7. The respondent agrees to pay the costs incurred by The Florida Bar in bringing this action when this consent judgment is tendered. If this plea is accepted, the respondent agrees to pay all reasonable costs incurred by The Florida Bar in bringing this case, including administrative

costs. The respondent further agrees not to seek to avoid payment of those costs through bankruptcy.

8. Should the Supreme Court of Florida approve this Conditional Guilty Plea for Consent Judgment, the respondent agrees not to seek future modification of its terms.

Dated this ____ day of _____, 20__.

Attorney,
Florida Bar No.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case

Complainant,

No. SC [Case Number]

v.

The Florida Bar File

[Name of Respondent],

No. [File Number]

Respondent.

_____ /

WITNESS SUBPOENA FOR TRIAL

The State of Florida:

TO: _____ (Respondent)
_____ (Address)
_____ (Email)

YOU ARE COMMANDED to appear before this court before the Honorable [Judge], [Circuit/County] Judge/Referee, [room number/floor/or chambers], at the [county] County Courthouse, [address], [city], Florida, on [day of week], the [date] day of [month], [year], at [time], [a.m. or p.m.], [EST/CST], and continuing thereafter until released, to testify and give evidence as a witness on behalf of The Florida Bar in the above-entitled action. If you fail to appear, you may be held in contempt of Court.

You are subpoenaed to appear by the following attorney, [Name of Bar Counsel], and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.

Persons with a disability who need special accommodation should contact the secretary of the lawyer who has requested this subpoena no later than 7 days before the trial.

Dated this _____ day of _____, 20____.

[Judge's name], Referee

RETURN OF SERVICE

I CERTIFY THAT THE ABOVE SUBPOENA IN The Florida Bar File No. (Bar File No.) was served this _____ day of _____, 20____, by _____.
[method of service]

[Signature & Title of Person Making Service]

This subpoena is issued at the request of [Name of Bar Counsel], Bar Counsel, The Florida Bar, [Address] , [Telephone]. Ext. [No.] or (800) 342-8060, ext. [Ext. No.]. Any questions or problems arising in connection with service or cooperation with this subpoena should be directed to [Mr./Ms. Name of Bar Counsel].

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

[Name of Respondent],

Respondent.

Supreme Court Case

No. SC [Case Number]

The Florida Bar File

No. [File Number]

_____ /

CERTIFICATION OF RECORD AND INDEX

I CERTIFY the above record and index are complete under R.
Regulating Fla. Bar 3-7.6(n)(3).

Dated this ____ day of _____, 20__.

[Judge's name]
[Circuit or County]
[Address]

Electronic Copy of the Certification, Index, and Record Filed via the Florida Court's E-Filing Portal with the Supreme Court.

Copies of only the Index and this Certification provided via the Florida Courts E-Filing Portal to:

Bar Counsel, The Florida Bar, [e-mail address]

Respondent/Counsel for Respondent [e-mail address]

Patricia Toro Savitz, Staff Counsel, psavitz@floridabar.org