

Acting as a Bar Referee

Course Outline

July 15, 2015

This outline is heavily based on The Florida Bar's *Overview of The Florida Bar Discipline System* PowerPoint, as updated and reorganized July 12, 2015, by Judge Diana L. Moreland, Circuit Judge, Twelfth Judicial Circuit.

Unless otherwise indicated, all "Rule xxx" references in this document are to the Rules Regulating The Florida Bar. These rules are available at <http://www.floridabar.org/>. If you are reviewing this document online, you may access the [Rules Regulating The Florida Bar by clicking this link](#). The rules are also in *Florida Rules of Court—State* (Thomson West 2015).

A. Pre-Appointment of Referee:

1. Florida Bar Staff: *See* [Rule 3-7.3](#).
 - a. Investigation/Intake/Screening
 - Jurisdiction to investigate. *See* [Rule 3-3.1](#).
 - True violation – Would conduct, if proven, constitute a violation of the rules? If so, inquiry may become a disciplinary file.
 - Response
 - Rebuttal
 - Recommendation/action:
 - Referral to Attorney/Consumer Assistance Program
 - Diversion program
 - Fee arbitration or mediation
 - Close file
 - Referral to branch office
 - b. Disciplinary Investigation (Branch Office)
 - Further investigation
 - Recommendation/action:
 - Diversion program
 - Fee arbitration or mediation
 - Close file. This becomes public information. *See* [Rule 3-7.3\(g\)](#).
 - Referral to grievance committee if complaint in proper form.

2. Grievance Committee (81 grievance committees comprised of 1/3 non-lawyers): *See* [Rule 3-7.4](#) and [Rule 3-3.4\(c\)](#).
 - a. Investigator assigned.
 - b. Additional investigation
 - c. Hearing or review.
 - Not a hearing concerning guilt, but to determine if probable cause exists, much like a grand jury.
 - Hearing itself is informal.
 - d. Recommendation/action:
 - Diversion program
 - Fee arbitration or mediation
 - Finding of no probable cause
 - Finding of no probable cause with a letter of advice
 - Finding of minor misconduct
 - Finding of probable cause – 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\(j\)](#).
 - Recommendation sent to the designated board of governor reviewer. *See* [Rule 3-7.5](#).
3. Board of Governors: *See generally* [Rule 3-3.2](#).
 - a. Review of report of grievance committee by designated reviewer
 - b. Designated reviewer, within 30 days, may request in writing, copied to bar counsel, that the grievance committee reconsider, or the reviewer may refer the matter to the board of governors disciplinary review committee. *See* [Rule 3-7.5\(a\)](#).
 - c. Designator reviewer may recommend as part of its referral:
 - Diversion program
 - Fee arbitration or mediation
 - Finding of no probable cause
 - Finding of no probable cause with a letter of advice
 - Finding of minor misconduct
 - Finding of probable cause – 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\(j\)](#).

- Recommendation sent to the designated board of governor reviewer. *See Rule 3-7.5.*
- d. Requests for reconsideration
 - Must be forwarded to chair of the grievance committee
 - If the grievance committee agrees to reconsideration, the same procedural rules apply. *See Rule 3-7.5(1)(a).*
- e. Board of Governors Disciplinary Review Committee
 - Review and make recommendation report to board of governors. Action may be any of those available to the designated reviewer.
 - Recommendation report shall be final unless overruled by the board.
- f. Failure of designated reviewer to timely request reconsideration or refer the matter makes the grievance committee’s action final. *See Rule 3-7.5(a)(4).*
- g. Board of Governors
 - The board of governors, by a majority vote, may confirm, reject, or amend the disciplinary review committee’s report. Action may be any of those available to the disciplinary review committee.
 - A finding of no probable cause shall be final, and no further proceedings shall be had in the matter by The Florida Bar. *See Rule 3-7.5(e).*

B. Appointment of Referee:

1. After a finding of probable cause and the complaint is filed, the chief justice or his or her delegated chief judge of a judicial circuit will appoint a circuit or county judge as “referee.” The chief justice may also appoint a retired judge. *See Rule 3-7.6(a)(1).*
2. To be eligible for appointment as a referee, the judge must have previously served as a referee in a bar disciplinary proceeding prior to February 1, 2010, or must have received the referee 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).*
3. A delegated chief judge should appoint a county or circuit judge as referee within fourteen (14) days. *See Appendix A.*
4. The circuit or county judge appointed as referee will receive a letter of appointment. *See Appendix B.*

C. Pre-Trial:

1. Nature of Proceedings: Quasi-judicial administrative proceeding, which is neither civil nor criminal. *See* [Rule 3-7.6\(f\)](#).
2. Participants:
 - a. Bar counsel: is an employee or an appointed lawyer who is charged with investigating, preparing, and prosecuting with due diligence any case assigned. *See* [Rule 3-2.1\(a\)](#); [Rule 3-7.6\(g\)](#); *see also* [Rule 3-3.3\(d\)](#) (“[a] member of a grievance committee may represent the bar in any proceeding before a referee . . . if the case was not considered by the grievance committee on which the member serves”).
 - b. Respondent: is a lawyer, usually a member of The Florida Bar, charged with misconduct. *See* [Rule 3-2.1\(m\)](#).
 - c. Complaining witness: is not a party and shall have no rights other than those of any other witness. Unless impractical, the complaining witness may be granted the right to be present when the respondent is also present if he or she has already testified in the case in chief. *See* [Rule 3-2.1\(c\)](#); [Rule 3-7.6\(k\)](#).
3. Pretrial Conference/Case Management: *See* [Rule 3-7.6\(c\)](#).
 - a. Shall be conducted by the referee within sixty (60) days of appointment.
 - b. The conference shall set a schedule for the proceedings that will include but not be limited to issues surrounding venue, discovery deadlines, and a final hearing date.
 - c. The referee shall enter a written order.
 - d. A copy of written order shall be sent to the clerk of the supreme court. Original in record kept by referee.
4. Venue: *See* [Rule 3-7.6\(d\)](#).
 - a. The county where the offense occurred;
 - b. The county where the respondent resides;
 - c. The county where the respondent practices law or last practiced law in Florida; or
 - d. If the respondent is not a resident of Florida and if the offense did not occur in Florida, then as designated by the chief justice.
 - e. The parties may stipulate to having the hearing held where the referee presides.
5. Rules of Procedure:

- a. [Florida Rules of Civil Procedure](#) apply except where they conflict with the [Rules Regulating The Florida Bar](#). *See Rule 3-7.6(f)(1)*.
 - b. Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure. *See Rule 3-7.6(f)(2)*.
 - c. Process is perfected by mailing registered or certified papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar. *See Rule 3-7.11(b)*.
6. Pleadings: *See Rule 3-7.6(h)*.
- a. Complaint: *See Rule 3-7.6(h)(1)*.
 - Required:
 - Probable cause determined. *See Rule 3-3.2(b)(1)*.
 - After an emergency suspension or probation. *See Rule 3-3.2(b)(2)*.
 - After a felony determination or adjudication. *See Rule 3-3.2(b)(3)*.
 - After discipline in another jurisdiction. *See Rule 3-3.2(b)(4)*.
 - After a felony charge with concurrence by chair of the grievance committee. *See Rule 3-3.2(b)(5)*.
 - After a respondent is found guilty of judicial misconduct by the Supreme Court of Florida in an action brought by the Florida Judicial Qualifications Commission, the respondent is no longer a judicial officer, and the facts warrant disciplinary sanctions. *See Rule 3-3.2(b)(6)*.
 - Prepared by The Florida Bar counsel
 - Filed with the Supreme Court of Florida
 - Shall set forth the particular act(s) of conduct for which discipline is sought
 - See also [Rule 3-5.2\(b\)](#), as amended by [SC10-1967](#) (effective July 1, 2012), allowing for interim placement of lawyer on the inactive list for incapacity not related to misconduct, which petition for interim placement constitutes the complaint.
 - b. Answer and Motions: *See Rule 3-7.6(h)(2)*.
 - Required within twenty (20) days of service of complaint. Mailbox rule applies.
 - May include in Answer or by separate motion:

- challenges to sufficiency of complaint
 - challenges to jurisdiction
 - all other defenses must be included in respondent's answer
 - invocation of privilege, immunity, or disability.
 - *The respondent may be called as a witness by The Florida Bar to provide specific and complete disclosure of all matters material to the issue. **NOTE:** the courts have continually held that bar disciplinary proceedings are remedial, and are designed for the protection of the public and the integrity of the courts. To protect the public the bar is mandated to inquire into an attorney's conduct when even the appearance of impropriety exists. For these reasons, the vast weight of judicial authority recognizes Florida Bar proceedings are therefore "remedial," not "penal," and any invocation by the respondent of [Fifth Amendment](#) rights is generally improper. See [Rule 3-7.6\(j\)](#). **DeBock v. State**, 512 So. 2d 164 (Fla. 1987); **Fla. Bar v. Massfeller**, 170 So. 2d 834 (Fla. 1964).*
 - However, 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. See [Rule 3-7.2\(k\)](#) (waiver of time limits). *But see* [Rule 3-7.4\(e\)](#).
- c. Reply: See [Rule 3-7.6\(h\)\(3\)](#).
- Should be filed within ten (10) days of service of the answer.
 - Failure by the bar counsel to respond shall not be prejudicial and all affirmative allegations deemed denied by The Florida Bar.

- d. Request for admissions: If a respondent fails to respond, admissions may be deemed admitted. Finding of guilt may be based on the tacit admissions. *Fla. Bar v. Weil*, 575 So. 2d 202 (Fla. 1991); *Fla. Bar v. Hollingsworth*, 376 So. 2d 394 (Fla. 1979).
- e. Disposition of motions: *See Rule 3-7.6(h)(4)*.
 - Motion hearings may be deferred until final hearing.
 - Rulings on motions may be reserved until termination of the final hearing.
- f. Subpoena: *See Rule 3-7.11(d)(1)*.
 - A subpoena for attendance of a witness or production of documents shall be issued only by the referee.
 - Service of process shall be as required by law or by an investigator employed by The Florida Bar.
 - Failure to comply, without adequate cause, may result in a finding of contempt. *See Rule 3-7.11(d)(7)*.
- g. Notice of Final Hearing: *See Rule 3-7.6(i)*.
 - The cause shall be set for trial by either party or the referee upon ten (10) days' notice.
 - The cause shall be held as soon as possible following the expiration of ten (10) days from the filing of the respondent's answer.
 - Extensions of time by the referee:
 - File prior to expiration
 - File original motion with clerk of supreme court
 - Note any party's objections

D. TRIAL/FINAL HEARING:

1. Public Proceedings: Matters which reach a referee are public information. NOTE: a referee may seal portions of the record, *see Rule 3-7.1(d)*, and the procedures for maintaining confidentiality are set forth in *Rule 3-7.1(m)*. However, sealing is frowned upon unless it is done for a truly legitimate reason such as protecting the identity of a minor adopted child, etc.
2. Termination of Proceedings:
 - a. Consent judgment:
 - *See The Florida Bar Referee Manual*, pp. 23–25.
 - A respondent may enter into a plea of guilty after a

formal complaint has been filed. Bar counsel, with approval of designated reviewer of the board of governors, will inform the respondent of disciplinary action sought. *See Rule 3-7.9(e)* (“Disbarment on Consent” as adopted in SC10-1967, effective July 1, 2012).

- Referee may accept or reject the consent judgment.
 - The sanction recommended in a consent judgment must be supported by case law, which is discussed in that consent judgment. Also, the facts must be clearly presented for the court’s ultimate review. The counts in the complaint must be accounted for in the consent judgment. Facts supporting the plea and recommended discipline should be stated.
- b. The board of governors may terminate disciplinary proceedings prior to receipt of evidence by a referee. *See Rule 3-7.5(f)*.
 - c. Summary judgment may be granted as in ordinary civil hearing. *Fla. Bar v. Gold*, 937 So. 2d 652 (Fla. 2006).
 - d. Disciplinary Revocation. *See Rule 3-5.1(g)* (as adopted in SC10-1967, effective July 1, 2012) (*see also Rule 3-7.12*, Disciplinary Revocation of Admission to The Florida Bar, as adopted in SC10-1967).
3. Court Reporters: Reporters are required to record all testimony. *See Rule 3-7.6(n)(1)*.
 4. Bifurcated Hearing: It is permissible to have a noticed guilt hearing followed by a noticed sanction hearing. If a referee finds the respondent guilty of any single rule violation, a hearing must be held to determine appropriate discipline. The sanction hearing may be held immediately following the guilt hearing or at some other reasonable date.
 5. Evidence:
 - a. The grievance committee record may be introduced to establish a prima facie case against the respondent. NOTE: if sufficient the grievance record may sustain a charge. *Fla. Bar v. Schneiderman*, 285 So. 2d 392 (Fla. 1973).
 - b. A referee is not bound by the technical rules of evidence. *Fla. Bar v. Tobkin*, 944 So. 2d 219 (Fla. 2006); *Fla. Bar v. Vining*, 707 So. 2d 670 (Fla. 1998); *Fla. Bar v. Rendina*, 583 So. 2d 314 (Fla. 1991).
 - c. The right of confrontation is limited. *Fla. Bar v. Vannier*, 498 So. 2d 896 (Fla. 1986). Hearsay evidence is admissible. *Fla.*

- Bar v. Centurion*, 801 So. 2d 858 (Fla. 2000); *Fla. Bar v. Weed*, 559 So. 2d 1094 (Fla. 1990).
- d. Parol evidence is admissible if necessary to resolve issues of excessive fees or costs. *See Rule 3-7.6(l)*.
 - e. The Exclusionary Rule does not apply. *Fla. Bar v. McClure*, 575 So. 2d 176 (Fla. 1991); *Fla. Bar v. Lancaster*, 448 So. 2d 1019 (Fla. 1984).
 - f. Character evidence is not permissible in the case in chief, but may be used for mitigation in the sanction hearing. *Fla. Bar v. Prior*, 330 So. 2d 697 (Fla. 1976).
6. Burden:
- a. The Florida Bar, through its bar counsel, has the burden.
 - b. The Florida Bar must establish its charges by clear and convincing evidence. *Fla. Bar v. McCain*, 361 So. 2d 700 (Fla. 1978); *Fla. Bar v. Rayman*, 238 So. 2d 594 (Fla. 1970).

E. REPORT AND RECOMMENDATION

1. Completion Date:
 - a. Original appointment will indicate entire process, including Report and Recommendation, shall be completed within 180 days except as provided by [Rule 3-5.2\(g\)](#).
 - b. The chief justice may extend this time upon motion by the referee. NOTE: all original motions for extension of time shall be filed with the clerk of the supreme court and include any objections.
 - c. [Rule 3-7.6\(m\)\(1\)](#) further provides that the Report and Recommendation shall be filed:
 - Within thirty (30) days after the conclusion of the hearing (guilt and sanction hearings); or
 - Within ten (10) days after the referee has received the transcript of all hearings, whichever is later.
2. Prepared by:
 - a. Referee
 - b. Bar counsel or respondent as directed by referee.
 - c. The referee **should always** make it clear that he or she used independent discretion in all aspects of his or her Report and Recommendation.
3. Sample Report: *See The Florida Bar Referee Manual*, pp. 18–22; as well as this Sample Referee Report. *See Appendix C*.
4. Contents of Report:

- a. Findings of fact as to each item of charged misconduct. *See* [Rule 3-7.6\(m\)\(1\)\(A\)](#).
- b. Recommendation of whether the respondent should be found guilty, or not, of each misconduct charged. *See* [Rule 3-7.6\(m\)\(1\)\(B\)](#).
- c. Recommendations as to the disciplinary measures to be applied:
 - Weigh all aggravators and mitigators.
 - Review relevant case law for similar case scenarios and previous disciplines found appropriate. An analysis of the facts in similar cases should be undertaken with a comparison to the pending case, as presentation of case law is crucial in the report.
 - Review the Standards for Imposing Lawyer Sanctions
 - Respondents may be ordered to attend and complete various Florida Bar courses such as LOMAS, Professionalism, or Anger Management. They also may be ordered to consult with FLA, Inc.
 - Familiarize yourself with the types of discipline:
 - Diversion – while not really a sanction, diversion may be used to dispose of a case involving minor misconduct. *See* [Rule 3-5.3\(h\)](#).
 - Probation. *See* [Rule 3-5.1\(c\)](#).
 - Admonishment. *See* [Rule 3-5.1\(a\) & \(b\)](#); [Rule 3-5.4](#).
 - Public reprimand. *See* [Rule 3-5.1\(d\)](#); [Rule 3-5.4](#).
 - Suspension. *See* [Rule 3-5.1\(e\)](#).
 - Disbarment. *See* [Rule 3-5.1\(f\)](#).
 - Forfeiture of fees. *See* [Rule 3-5.1\(i\)](#).
 - Restitution. *See* [Rule 3-5.1\(j\)](#).
 - Restitution is appropriate in cases involving excessive fees, illegal fees, conversion of client funds, or conversion of trust property. *See* [Rule 3-5.1\(j\)](#); *Fla. Bar v. Feige*, 937 So. 2d 605, 611 (Fla. 2006). Restitution is not used for other purposes. *See* *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 attorneys); *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).

- Disciplinary revocation. *See* [Rule 3-5.1\(g\)](#).
 - Disciplinary revocation, added in 2012, is tantamount to disbarment. The referee will not recommend it in the report as it is a matter directly between the lawyer who requests it and the Court.
 - d. A statement as to any past disciplinary measures with reference to the respondent that are on record. *See* [Rule 3-7.6\(m\)\(1\)\(D\)](#).
 - e. A statement of costs incurred and recommendations as to the manner in which such costs should be taxed. *See* [Rule 3-7.6\(m\)\(1\)\(E\)](#).
 - NOTE: costs are not considered discipline and are awarded at the discretion of the referee following receipt of a timely filed motion to assess costs which must include a statement of costs incurred in the proceeding as set forth above. *See* [Rule 3-7.6\(q\)](#).
 - f. Certificate of service or *cc*: certifying the Report and Recommendation has been sent to parties (directly to the respondent if unrepresented) and bar counsel. The bar counsel will make the record available to other parties. *See* [Rule 3-7.6\(m\)\(2\)](#).
5. Hints to Avoid Common Report Problems/Shortcomings:
- a. It is important for the report of the referee to state which witness(es) the referee found credible or not credible.
 - b. It is crucial to present facts that show the misconduct.
 - c. The facts showing misconduct must be linked to the rules that the respondent violated or did not violate.
 - d. State the charged misconduct.
 - e. Make a clear ruling as to each charge.
 - f. Clearly state which charged misconduct is supported by the facts.
 - g. State the recommended discipline for each charge supported by the facts.
6. Record:
- a. Prepared by the referee with assistance of bar counsel. *See* [Rule 3-7.6\(n\)\(3\)](#). [Rule 3-7.6\(n\)\(3\)](#) also requires the referee to certify that the record is complete.

- b. The record includes:
 - Final Index. *See* [Appendix D](#).
 - Pleadings
 - Recorded and transcribed testimony
 - All exhibits received as evidence
 - Correspondence (including emails)
 - Report and Recommendation of Referee; voluntary dismissal, or consent judgment
 - Tabs and dividers corresponding to final index
 - Notice of Certification of Record. *See* [Appendix E](#).
 - c. The complete, well-organized, properly indexed record shall be mailed to the Supreme Court of Florida via the Supreme Court Clerk of Court. Bar counsel will make copies of the record available to other parties. *See* [Rule 3-7.6\(m\)\(2\)](#).
 - d. The same day the original record is mailed to the Florida Supreme Court, the referee shall e-file the Report and Recommendation with the Florida Supreme Court at e-file@flcourts.org.
 - The Report and Recommendation shall be as a Word format attachment (obtained from bar counsel).
 - The referee's electronic signature shall be affixed to the Report and Recommendation using “/s/” format.
 - The Supreme Court case number shall be on the subject line.
7. Report and Recommendation: Shall be prepared in Times New Roman 14-point font.
 8. Resources: *See* [Appendix F](#).

Appendix A:
Designation of Chief Judge to Appoint Referee

Supreme Court of Florida

WHEREAS, it officially has been made known to me that it is necessary to appoint a referee for the Court pursuant to [rule 3-7.6\(a\), Rules Regulating The Florida Bar](#), to preside in a disciplinary action brought by The Florida Bar pursuant to [Chapter 3 of the Rules Regulating The Florida Bar](#) in the matter of:

The Florida Bar vs. _____,
Supreme Court Case No. SC _____

NOW, THEREFORE, I, _____, under authority vested in me as Chief Justice of the Supreme Court of Florida, do hereby designate the Honorable _____, Chief Judge of the _____ Judicial Circuit Court of Florida, to appoint a referee for the Court in the above matter and, within fourteen (14) days of this order, to notify the Clerk of the Florida Supreme Court and the parties as to the judge appointed as referee. The referee shall conduct a case management conference, to be held no later than sixty (60) days from the date of appointment, at which the schedule for the proceedings, including the final hearing date, shall be set. The referee shall have the option of holding the required case management conference either in person or telephonically. The referee shall thereafter hear, conduct, try, and determine the matters presented at the final hearing, and submit findings of fact and recommendations to the Supreme Court of Florida as provided in [rule 3-7.6\(m\)](#). Pursuant to [rule 3-7.6\(m\)\(1\)](#), any order by the referee regarding disposition of the case shall be merely a recommendation to this Court. Such an order shall not dispose of the proceedings. This Court shall review and, if appropriate, approve the referee's recommended disposition order.

Except in cases where the ninety (90) day time limit provided by [rule 3-5.2\(g\)](#) applies, the referee’s report shall be filed within 180 days of his or her appointment, unless there are substantial reasons requiring delay.

DONE AND ORDERED at Tallahassee, Florida, on _____.

CHIEF JUSTICE
SUPREME COURT OF FLORIDA

ATTEST:

CLERK, SUPREME COURT

Enclosed: Complaint

A previous case involving this respondent was assigned to the Honorable _____.

NOTE: 90-DAY RULE APPLIES

Appendix B:
Sample Letter of Appointment of Referee



STATE OF FLORIDA
TWELFTH JUDICIAL CIRCUIT
P.O. Box 48927
SARASOTA, FLORIDA 34230
TELEPHONE (941) 861-7942
FACSIMILE (941) 861-7913

ROBERT B. BENNETT
CHIEF JUDGE

February 27, 2006

Honorable Diana Moreland
Post Office Box 48927
Sarasota, Florida 34230

RE: The Florida Bar v.
SC06-

Dear Judge Moreland:

Enclosed please find your appointment as Referee in the above-referenced matter. For your records, I have also enclosed the assignment rotation. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Bennett, Jr.", written over a horizontal line.

Robert B. Bennett, Jr.
Chief Judge

APPENDIX B

**Appendix C:
Sample Report of Referee**

THE FLORIDA BAR
Complainant,

Case No. (Supreme Court Case No.)
TFB File No. (Bar File No.)

v.

(ATTORNEY NAME)
Respondent.

_____ /

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS:

II. FINDINGS OF FACT RE: TFB No. _____, and TFB No. _____.
(use if multiple case numbers)

- A. Jurisdictional Statement:** Respondent is, and at all times mentioned during this Investigation was, a member of The Florida Bar subject to the jurisdiction and Disciplinary Rules of the Supreme Court.
- B. Narrative Summary of First Case (case number)**
- C. Narrative Summary of Second Case**

III. RECOMMENDATION AS TO GUILT

A. Violation: First Case (First Case Number)

I recommend that the Respondent be found guilty of violating Rules (Insert specific rules violated) of Rules of Discipline of The Florida Bar; and Rules (Insert specific rules violated) of Rules Professional Conduct.

- 1. Violation (insert first rule violated)
The clear and convincing evidence is
- 2. Violation (insert second rule violated)
The clear and convincing evidence is

B. Violation: Second Case (Second Case Number)

I recommend that the Respondent be found guilty of violating Rules (Insert specific rules violated) of [Rules of Discipline of The Florida Bar](#); and Rules (Insert specific rules violated) of [Rules Professional Conduct](#).

1. Violation (insert first rule violated)
The clear and convincing evidence is
2. Violation (insert second rule violated)
The clear and convincing evidence is

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures and that he/she be disciplined by:

- A. Probation, *see* [3-5.1\(c\)](#); Admonishment, *see* [3-5.1\(a\) & \(b\)](#); Public Reprimand, *see* [3-5.1\(d\)](#); Suspension, *see* [3-5.1\(e\)](#); Disbarment, *see* [3-5.1\(f\)](#); Forfeiture of Fees, *see* [3-5.1\(i\)](#); and/or Restitution, *see* [3-5.1\(j\)](#)
- B. Costs. *See* [3-7.6\(q\)](#). *NOTE if costs are by consent of Respondent or attach Bar Affidavit*

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS

Prior to recommending discipline pursuant to [Rule 3-7.6 \(m\)\(1\)](#), I considered the following:

A. Personal History of Respondent:

1. Date of birth
2. Education
3. Military experience
4. Employment
5. Date admitted to Bar
6. Medical history
7. Mental health history
8. Addictions
9. Treatment

B. Duties Violated:

1. The duties violated by Respondent to clients. (*See Florida's Standards for Imposing Lawyer Sanctions with Commentary, Section 4.0, pp. 19–34*)
2. The duties violated by Respondent to the public. (*See Florida's Standards for Imposing Lawyer Sanctions; Section 5.0, pp. 34–38*)
3. The duties violated by the Respondent to the legal system. (*See Florida's Standards for Imposing Lawyer Sanctions with Commentary, Section 6.0, pp. 38–43*)
4. The duties violated by the Respondent as a professional. (*See Florida's Standards for Imposing Lawyer Sanctions with Commentary, Section 7.0, pp. 43–45*)

C. The potential or actual injury caused by the Respondent's Misconduct:

D. The existence of aggravating or mitigating circumstances (*See Florida's Standards for Imposing Lawyer Sanctions with Commentary, Sections 9.0, 11.0, 12.0, and 13.21, pp. 47-54, 71*):

1. **Aggravators**: The Court finds the following reference aggravating factors:
 - a. Prior disciplinary offenses;
 - b. Dishonest or selfish motive;
 - c. Pattern of misconduct;
 - d. Multiple offenses;
 - e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
 - f. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
 - g. Refusal to acknowledge wrongful nature of misconduct;
 - h. Vulnerability of victim;
 - i. Substantial experience in the practice of law;
 - j. Indifference to making restitution;
 - k. Obstruction of fee arbitration award by refusing or intentionally failing to comply with final award;
 - l. Any other factors that may justify an increase in the degree of discipline to be imposed.
2. **Mitigation**: The Court finds the following as to mitigating factors:
 - a. Absence of prior disciplinary record;

- b. Absence of dishonest or selfish motive;
- c. Personal or emotional problems;
- d. Timely good faith effort to make restitution or to rectify consequences of misconduct;
- e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- f. Inexperience in the practice of law;
- g. Character or reputation;
- h. Physical or mental disability or impairment;
- i. Unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the delay and provided further that the Respondent has demonstrated specific prejudice resulting from delay;
- j. Interim rehabilitation;
- k. Imposition of other penalties or sanctions;
- l. Remorse;
- m. Remoteness of prior offense(s);
- n. Prompt compliance with a fee arbitration award;
- o. Any other factors that may justify a reduction in the degree of discipline to be imposed.

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

I find the following cost were submitted to the Court in the form of an Affidavit by The Florida Bar and found to be reasonably incurred by The Florida Bar supported by substantial competent evidence. **OR** The following costs were submitted to the Court in the form of an Affidavit by The Florida Bar and the Respondent has no objection:

A. Grievance Committee Level

- 1. Administrative costs pursuant to [Rule 3-7.6\(q\)\(1\)\(I\)](#)..... \$
- 2. Court Reporter’s Fees..... \$
- 3. Bar Counsel Travel..... \$
- 4. Investigative Costs..... \$
- 5. Photocopies..... \$

Subtotal:

B. Referee Level

1.	Administrative costs pursuant to Rule 3-7.6(q)(1)(I)	\$1,250.00
2.	Court Reporter’s Fees.....	\$
3.	Bar Counsel Travel.....	\$
4.	Investigative Costs.....	\$
5.	Photocopies.....	\$
6.	Referee Expenses.....	\$
	Subtotal:	
	Total: \$	

C. Manner of Payment:

It is recommended that such costs be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning ____ days after the judgment has become final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this ____ day of _____, 20__.

(NAME OF REFEREE)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been sent: by certified mail to THE HONORABLE JOHN TOMASINO, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; by email to THE HONORABLE JOHN TOMASINO, Clerk, Supreme Court of Florida, e-file@flcourts.org; and that copies were mailed by regular U.S. Mail to _____, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; _____, Assistant Staff Counsel, The Florida Bar, 5521 W. Spruce Street, Suite C-49, Tampa, FL 33607-5958 and _____, (Attorney for Respondent, or Respondent if unrepresented): this ____ day of _____, 20__.

(NAME OF REFEREE)
Referee

Appendix D:
Sample Index of Record

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

Case No. (Supreme Court Case No.)
TFB File No. (Bar File No.)

v.

(ATTORNEY NAME)
Respondent.

INDEX OF RECORD

<u>Tab</u>	<u>Pleading</u>	<u>Date filed/issued</u>
1.	COMPLAINT	08/07/07
2.	ORDER to Appoint Referee	08/15/07
3.	ORDER Appointing Referee	08/20/07
4.	NOTICE of Telephonic Case Management Conference	08/30/07
5.	RESPONDENTS ANSWER	10/05/07
6.	NOTICE of Final Hearing	10/20/07
7.	REQUEST TO PRODUCE	10/25/07
8.	COMPLAINANT'S Written Interrogatories to Respondent	10/25/07
9.	RESPONDENT'S MOTION for Continuance	12/04/07
10.	AFFIDAVIT OF COSTS	12/27/07
11.	REPORT OF REFEREE	01/15/08
12.	CORRESPONDENCE	

Appendix E:

Sample Notice of Certification of the Record

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

Case No. (Supreme Court Case No.)
TFB File No. (Bar File No.)

v.

(ATTORNEY NAME)
Respondent.

_____ /

NOTICE OF CERTIFICATION OF THE RECORD

This will certify that the record in Supreme Court Case No. _____, including the index, all pleadings, orders, exhibits, transcripts, and correspondence that is submitted herewith, constitutes the complete record before the referee in the case.

Submitted this _____ day of _____, 20__.

(NAME OF REFEREE)
Referee

Copies to:

_____, Respondent
_____, Bar Counsel
_____, Staff Counsel

Appendix F:

Resources

Florida State Courts Judiciary Education:

Internet: <http://www.flcourts.org>

Select: *Resources & Services/Judiciary Education/Bar Referee Information/Attorney Disciplinary Proceedings*

Results:

1. [Notice about the Preparation and Filing of the Record](#)
2. [Bar Referee Manual \(2014\)](#)
3. [Contact Information and E-filing](#)
4. [Memorandum: Handling Unopposed Motions to Seal Records in Bar Disciplinary Proceedings \(March 2009\)](#)
5. [Sample Referee Report \(Prepared by Judge Diana Moreland\)](#)
6. [Florida Standards for Imposing Lawyer Sanctions \(Revised May 12, 2015\)](#)
7. [Frequently Asked Questions](#)
8. [2015 Bar Referee Training Information](#)

Clerk of Florida Supreme Court: The Honorable John Tomasino

500 South Duval Street
Tallahassee, Florida 32399-1927
Florida Bar Clerk: Diana Davis (850) 488-0125

E-File address Clerk of Florida Supreme Court: The Honorable John Tomasino

e-file@flcourts.org