

UPL

Referee Manual

Prosecutions For Injunctive Relief



**A GUIDE FOR
FLORIDA BAR UNLICENSED PRACTICE OF LAW PROCEEDINGS FOR
INJUNCTIVE RELIEF CONDUCTED PURSUANT TO
THE RULES REGULATING THE FLORIDA BAR**

Revised 1/10

TABLE OF CONTENTS

I.	Purpose	2
II.	Jurisdiction	2
III.	Proceedings Before Case is Referred to a Referee	3
IV.	Trial By Referee	4
	A. Venue	4
	B. Case Management Conference	4
	C. Subpoenas	4
	D. Discovery	4
	E. Filing of Pleadings	5
	F. Review of Interlocutory Rulings	5
	G. Civil Penalties	5
V.	Confidentiality	6
VI.	Stipulations	6
VII.	Referee's Report	6
VIII.	Statement of Costs	7
IX.	Filing the Referee's Report and Record	7
X.	Proceedings After Referee's Report Submitted	8
XI.	Final Order	8

Forms

Form 1 - Administrative Order Appointing Referee

Form 2 – Order Setting Case Management Conference

Form 3 - Stipulation

Form 4 - Motion to Approve Stipulation

Form 5 - Report of Referee When Joint Stipulation
Has Been Filed

Form 6 - Report of Referee When No Stipulation Has Been Filed

Form 7 - Statement of Costs

Form 8 – Index of Record

Statutory Criteria in Determining Indigency and Sample Affidavit

I. PURPOSE

The purpose of this guide is to provide referees with information pertinent to the performance of a referee's duties in Unlicensed Practice of Law (UPL) proceedings seeking injunctive relief.

This guide is designed to summarize the procedures and rules in UPL proceedings seeking injunctive relief. It is not all inclusive and is not meant to substitute for the reading of the basic rules and laws governing UPL proceedings seeking injunctive relief. This manual does not discuss proceedings for indirect criminal contempt.

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

Chapter 10, Rules Regulating The Florida Bar

Case law which may be found under the heading of "Attorney and Client" in the Fla. Digest

Florida Rules of Civil Procedure

II. JURISDICTION

Under Article V, Section 15 of the Florida Constitution, the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to practice law and the discipline of persons so admitted. (All references herein to "the Supreme Court" shall mean the Supreme Court of Florida.)

Pursuant to the provisions of Article V, Section 15, the Supreme Court has the inherent jurisdiction to prohibit the unlicensed practice of law.

The Florida Bar, as an official arm of the Supreme Court, is charged both with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law, and with the prosecution of alleged offenders. Chapter 10 of the Rules Regulating The Florida Bar governs the investigation and prosecution of the unlicensed practice of law. Rule 10-7.1 and the Florida Rules of Civil Procedure govern proceedings before a referee for

civil injunctive relief.

III. PROCEEDINGS BEFORE CASE IS REFERRED TO REFEREE

Prior to filing a Petition Against the Unlicensed Practice of Law, a recommendation to institute litigation must be accepted by the Standing Committee on UPL and the Board of Governors of The Florida Bar through a designated reviewer.

Once a litigation recommendation is accepted, UPL counsel drafts a Petition Against The Unlicensed Practice of Law. The petition is filed in the Supreme Court. The petition is filed in the name of The Florida Bar and sets forth the facts constituting the unlicensed practice of law with reasonable clarity in non-technical language. Rules 10-7.1(a) and 10-7.1(b)(1), Rules Regulating The Florida Bar.

After reviewing the petition for sufficiency, the Supreme Court issues an Order to Show Cause directing the Respondent to file a response to the petition within twenty (20) days of service. Rule 10-7.1(b)(2), Rules Regulating The Florida Bar.

Service is arranged by the Supreme Court and monitored by UPL counsel. The Respondent may file an answer or a motion to dismiss. Rule 10-7.1(b)(2), Rules Regulating The Florida Bar.

If no response or defense is filed, the allegations of the petition are taken as true for the purpose of that action. At this point, the Supreme Court may either decide the case upon its merits, or refer the petition to a referee for further proceedings. Rule 10-7.1(b)(4), Rules Regulating The Florida Bar.

If a response or defense filed by a Respondent raises an issue of material fact, the Supreme Court may, upon its motion or the motion of any party, refer questions of fact to a referee for determination. Rule 10-7.1(b)(6), Rules Regulating The Florida Bar.

In appointing a referee, the Supreme Court will direct the chief judge of the circuit where the Respondent resides or where the offense was committed to

designate a circuit court judge to act as referee. (A sample Administrative Order from the chief judge of the circuit court appointing a referee is attached as form 1.)

IV. TRIAL BY REFEREE

Proceedings before a referee are in accordance with the following procedures:

A. Venue

The proceedings are held in either the county where the Respondent resides or where the alleged offense was committed as designated by the Supreme Court. Rule 10-7.1(c)(1), Rules Regulating The Florida Bar.

B. Case Management Conference

The referee is to conduct a case management conference within 60 days of the order assigning the case to the referee. The purpose of the conference is to set the schedule for the proceedings, including discovery deadlines and a final hearing date, and to inform the Respondent that the Respondent has the burden to show an inability to pay a civil penalty if the bar is requesting a civil penalty and such an inability exists. The referee enters an order reflecting the schedule determined at the conference. Rule 10-7.1(c)(2), Rules Regulating The Florida Bar. An indigency affidavit should be sent with the order if the bar is seeking a civil penalty.

C. Subpoenas

Witness subpoenas may be issued by the referee upon request of a party. The subpoena will run in the name of the Supreme Court. Failure or refusal to comply with a subpoena is a contempt of court and is punishable by the Supreme Court or by any circuit court where the action is pending or where the contemnor may be found. Rule 10-7.1(c)(3), Rules Regulating The Florida Bar.

D. Discovery

The Florida Rules of Civil Procedure, including those provisions pertaining to

discovery, apply to proceedings before the referee. A referee may exercise the powers and jurisdiction generally reposed in the Supreme Court under these rules. Rule 10-7.1(c)(4), Rules Regulating The Florida Bar.

E. Filing of Pleadings

All pleadings filed after the referee is appointed and until the referee's recommendation is sent to the Supreme Court, although styled "In The Supreme Court of Florida," are filed with the referee rather than the Supreme Court or the local circuit court. Arrangements should be made with the referee's judicial assistant for the filing of pleadings. The Florida Bar may amend its petition once as of right within sixty (60) days after the filing of the order of reference to a referee. Rule 10-7.1(c)(4), Rules Regulating The Florida Bar.

F. Review of Interlocutory Rulings

A petition to the Supreme Court for review of interlocutory rulings of the referee may be filed within thirty (30) days after entry of the complained of ruling. The party seeking review must file a supporting brief and a transcript containing conformed copies of pertinent portions of the record with the Supreme Court. Any opposing party may file a responsive brief and appendix containing any additional portions of the record deemed pertinent within ten (10) days thereafter. The petitioner may file a reply brief within five (5) days of the date of service of the opposing party's responsive brief. Any party may request oral argument at the time a brief is filed or due. Interlocutory review does not stay the cause before the referee unless the referee or the Supreme Court on its own motion or upon motion of a party orders otherwise. Rule 10-7.1(c)(5), Rules Regulating The Florida Bar.

G. Award of Civil Penalties

The Florida Bar may request the award of civil penalties. The penalties may not exceed \$1,000 per incident of UPL. The amount of the penalty requested will be set forth in the petition.

Except in cases where there is a stipulation, the Respondent has the burden to show an inability to pay the civil penalty. This is done by filing an affidavit

containing the statutory financial information required to be submitted to the clerk of court when determining indigent status. The affidavit must be signed under oath and under penalty of perjury. Rule 10-7.1(c)(4). In determining indigent status, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by the court when reviewing that determination. Id. The applicable statutory criteria are attached to this handbook.

V. CONFIDENTIALITY

The case and the UPL record are deemed public. Rules 10-8.1(b); 10-8.1(e)(4). Any requests for the record should be forwarded to UPL Staff Counsel.

VI. STIPULATIONS

A case may be settled short of a hearing or referee's report if the parties enter into a stipulation. A motion to approve the stipulation and the stipulation are filed with the referee. If approval of the stipulation is deemed appropriate, the referee executes an order approving the stipulation which is served on all parties. The approved stipulation, the referee's recommendations and original record are then filed with the Supreme Court. Should the referee not approve the stipulation, the proceedings will continue to final hearing. Rule 10-7.1(d)(4), Rules Regulating The Florida Bar. (See forms 3 and 4 attached hereto as examples of a Stipulation and Motion to Approve Stipulation. See form 5 for example of Referee's Recommendations and Report in a case where a stipulation is accepted.)

VII. REFEREE'S REPORT

At the conclusion of the hearing, the referee makes a written report stating the following:

findings of fact

conclusions of law

a recommendation for final disposition of the case

a statement regarding the Respondent's ability to pay a civil penalty

a statement of costs incurred and recommendations as to the manner in which costs should be taxed as provided in Rule 10-7.1(d)(2)

a recommendation that the Respondent be ordered to pay restitution as provided in Rule 10-7.1(d)(3)

If the referee finds that the Respondent has the ability to pay a civil penalty, the amount of the penalty shall be stated in the report as well as the evidence upon which this finding was made. If the referee finds that the Respondent has an inability to pay a civil penalty, this shall be stated in the report along with a recitation of the evidence to support the finding.

In determining the amount of restitution, the referee shall consider testimony and any evidence that shows the amount complainant(s) paid to Respondent, including cancelled checks, credit card receipts, receipts from Respondent and any other documentation evidencing the amount of payment.

See form 5 for example of Referee's Report.

VIII. STATEMENT OF COSTS

At the conclusion of the hearing or at the time the stipulation is filed, Bar counsel will file a Statement of Costs incurred by The Florida Bar. The referee shall have discretion to recommend the assessment of costs. The award should be included in the referee's report. (See form 6 attached hereto as an example of a Statement of Costs.)

IX. FILING THE REFEREE'S REPORT AND RECORD

The referee's report and the original record are filed with the Supreme Court. Copies of the referee's report are served upon all parties by the referee at the time the report is filed with the Court. A copy of the referee's report, should also be sent to:

Unlicensed Practice of Law Counsel
The Florida Bar
651 East Jefferson St.
Tallahassee, Florida 32399-2300
Rule 10-7.1(d)(1), Rules Regulating The Florida Bar.

Pursuant to Supreme Court Administrative Order No. AOSC04-84, all referee reports must be submitted electronically to the Court by emailing the report to e-file@flcourts.org in Microsoft Word format. The subject line of the email must contain the Supreme Court case number. The document must be emailed the same day the original paper copy is filed or served.

The record consists of all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits and the report of referee. The referee prepares the record and certifies that the record is complete. An index of the record is served on bar counsel and the Respondent. The original record, with the index, is filed with the clerk of the Supreme Court. The Respondent and The Florida Bar may seek to supplement the record by filing a motion within 15 days of the service of the index. Rule 10-7.1(e). Bar counsel is available to assist in the preparation of the record. (See form 8 for a sample index.)

X. PROCEEDINGS AFTER REFEREE'S REPORT SUBMITTED

Any aggrieved party may file an objection to the report of the referee with the Supreme Court within thirty (30) days of the filing of the referee's report. A brief in support of the objection may be filed contemporaneously with the filing of the objection. Responsive and reply briefs may be filed in response to the filing of the objection brief. Oral argument will be allowed at the Supreme Court's discretion. Rule 10-7.1(e)(1), Rules Regulating The Florida Bar.

XI. FINAL ORDER

Upon the expiration of time allotted to file objections to the referee's report, the Supreme Court reviews the report of the referee as well as any briefs or objections filed either in support of or in opposition to the referee's report. After this review, the Supreme Court determines as a matter of law whether the Respondent has engaged in the unlicensed practice of law, whether to enjoin Respondent's activities, whether to award costs, whether to award a civil penalty, whether to order the payment of restitution and, whether to grant further relief. Rule 10-7.1(e)(2), Rules Regulating The Florida Bar.

Form 1
(Administrative Order Appointing Referee)

IN THE CIRCUIT COURT _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
ADMINISTRATIVE ORDER NO.

RE: APPOINTMENT OF REFEREE

IT HAS been officially made known to me that it is necessary to appoint a referee for the Court pursuant to the provisions of Rule 10-7.1(b)(6), Rules Regulating The Florida Bar, to preside in an Unlicensed Practice of Law action pursuant to Rule 10-7.1.

THEREFORE, The Honorable _____, Chief Justice of the Supreme Court of Florida, by Order dated _____, designated the Chief Judge of the _____ Judicial Circuit to appoint a referee for the Supreme Court of Florida in said proceeding, it is hereby

ORDERED:

The Honorable _____, Circuit Judge, in and for the _____ Judicial Circuit, _____ County, State of Florida, is hereby designated and appointed as referee for the Supreme Court of Florida, in the matter of:

_____ v.
Supreme Court Case No.

The Honorable _____ as referee shall hear, conduct, try and determine matters presented and shall submit findings of fact and recommendations to the Supreme Court of the State of Florida as provided in Rule 10-7.1(d)(1). The referee's report shall be filed within 180 days of _____, unless there are substantial reasons requiring delay.

The said _____ is hereby vested with all and singular the powers and prerogatives conferred by the Constitution, laws of the State of Florida, and the Rules Regulating The Florida Bar, concerning a referee for the Supreme Court in an unlicensed practice of law matter.

DONE AND ORDERED in Chambers at _____, _____ County,

Florida, the _____ day of _____ .

Chief Judge

Form 2
(Order Setting Case Management Conference)

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

THE FLORIDA BAR
Petitioner

vs.

Case No.:

Respondent(s).

_____ /

ORDER SETTING CASE MANAGEMENT CONFERENCE

Pursuant to Rule 10-9.1(c)(2) of the Rules Regulating the Florida Bar, it is ORDERED:

A Case Management Conference is set for _____, at the _____, Room _____, _____, Florida _____. The time allocated for the hearing is _____ minutes.

Note: Language regarding the Respondent's burden to show an inability to pay a civil penalty should only be included in the order setting the case management conference if civil penalties are requested in the petition. The sample language states that an affidavit is attached. Attaching the affidavit is optional. A sample affidavit is included in the referee manual.

It is Respondent's (s') burden to show an inability to pay the civil penalty requested by The Florida Bar. Respondent(s) may meet this burden by filing an Affidavit for Determination of Civil Indigent Status with the undersigned. An affidavit which may be used for this purpose is attached.

DONE AND ORDERED in _____ County, Florida this ____ day of _____.

Referee

Copies to: All parties or their attorneys

Form 3
(Stipulation Filed by the Parties)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner,

v.

CASE NO.

RESPONDENT _____,
Respondent.
_____ /

STIPULATION

The parties hereto, by and through their undersigned attorneys, stipulate and agree as follows:

1. That Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not licensed to engage in the practice of law in the State of Florida.

2. Both parties agree that a writ of injunction shall issue permanently and perpetually enjoining Respondent, _____ NAME _____, and its officers, agents, servants or employees or those acting in concert with Respondent from:

a. IN SEPARATE PARAGRAPHS, LIST FACTUAL ALLEGATIONS OF PETITION

3. That Respondent agrees to pay restitution as follows: _____ amount of restitution, to whom it shall be made, how payments are to be made, the date by which it shall be completed, and whether it shall bear interest at the legal rate provided for judgments in this state _____.

DATE

for The Florida Bar

BAR # _____

DATE

____ BAR COUNSEL ____

RESPONDENT _____

DATE

Approved this _____ day of _____, _____, by:

NAME _____, Referee

PLEASE NOTE THAT THIS IS AN EXAMPLE ONLY. YOUR CASE MAY REQUIRE
ADDITIONAL TERMS TO BE INCLUDED IN THE STIPULATION.

Form 4
(Motion to Approve Stipulation Filed with the Referee)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner,

v.

CASE NO. _____

____ RESPONDENT _____,
Respondent.

_____ /

Motion To Approve Stipulation

Petitioner, The Florida Bar, by and through undersigned counsel, hereby files its motion for the Court to approve the stipulation entered into between the parties and to award costs against Respondent and, in support thereof, states as follows:

1. This cause was referred to this Court as referee by the Florida Supreme Court by Order dated _____.
2. The parties subsequently met and agreed to enter into a written stipulation resolving the disputes among the parties.
3. The original stipulation attached to this Motion is submitted for the Court's approval and execution.
4. The Florida Bar is entitled to recover its costs of this section. A Statement of Costs is attached hereto as Exhibit "A" and a proposed order is attached hereto as Exhibit "B".

WHEREFORE, Petitioner, The Florida Bar, requests that this Court approve and execute the stipulation and award costs to Petitioner.

NAME _____
FLA. BAR # _____
ADDRESS _____
PHONE # _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by U.S. Mail to _____ Respondent or Respondent's Counsel _____ this _____ day of _____, _____.

Attorney

PLEASE NOTE THAT THIS IS AN EXAMPLE ONLY. YOUR CASE MAY REQUIRE ADDITIONAL TERMS TO BE INCLUDED IN THE STIPULATION.

Form 5
(Report of Referee When A Joint Stipulation Has Been Filed)

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Petitioner,

Case No. _____
(TFB NO.)

v.

_____ RESPONDENT _____,
Respondent.
_____ /

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct proceedings herein according to Rule 10-7.1(b)(6), Rules Regulating The Florida Bar, the following proceedings occurred:

-----GIVE BRIEF SUMMARY OF PROCEDURAL HISTORY----- All of the aforementioned pleadings, attachments thereto, and exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Statement. Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not therefore licensed to engage in the practice of law in the State of Florida.

B. Narrative Summary of Case.

-----GIVE SUMMARY OF FACTS STIPULATED TO IN JOINT STIPULATION IF ANY-----

III. CONCLUSION OF LAW. Based upon the foregoing findings of fact, the undersigned referee makes the following conclusions of law:

IV. STIPULATION

The parties have entered into a joint stipulation and on ____ DATE ____ filed a Motion To Approve Stipulation with the undersigned referee.

V. RECOMMENDATIONS

The recommendations of the undersigned Referee are as follows:

A. That the stipulated settlement be approved by this Court.

B. That ---RESPONDENT--- be enjoined from the unlicensed practice of law as set forth in the stipulated injunction.

C. That a civil penalty in the amount of _____ be imposed against Respondent. The civil penalty shall be made payable to the Supreme Court of Florida and mailed to the bar's counsel of record within the time period ordered by the Supreme Court of Florida.

D. That the Respondent be ordered to pay restitution to: ___name(s) of complainant(s)___ in the amount of _____ by __date__, respectively, which __shall or shall not__ bear interest at the legal rate provided for judgments in this state. The restitution shall be made payable as specified herein and mailed to bar counsel of record within the time period ordered by the Supreme Court of Florida.

E. That the costs of this proceeding be taxed against Respondent.

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

I find the following costs were reasonably incurred by The Florida Bar:

- | | | |
|----|---------------------|-------------|
| 1. | Investigative Costs | \$____.____ |
| 2. | Court Reporter Fees | ____.____ |
| 3. | Copy Costs | ____.____ |
| 4. | Telephone Charges | ____.____ |

5.	Fees for Translation Service	____.____
6.	Witness expenses, including travel & out-of-pocket expenses	____.____
7.	Travel & out-of-pocket expenses of the referee	____.____
8.	Any other costs which may properly be taxed in civil litigation	____.____
	TOTAL	\$ ____.

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final.

Dated this _____ day of _____, ____.

NAME, REFEREE
ADDRESS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to _____, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399, and that copies were mailed by regular U.S. Mail to UPL Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, --- COUNSEL FOR THE FLORIDA BAR--- at _____ and ---RESPONDENT OR RESPONDENT'S COUNSEL--- at _____, this _____ day of _____, ____.

NAME, REFEREE

PLEASE NOTE THAT THIS IS AN EXAMPLE ONLY. YOUR CASE MAY REQUIRE ADDITIONAL TERMS TO BE INCLUDED IN THE STIPULATION.

Form 6
(Report of Referee When A Joint Stipulation Has Not Been Filed)

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Petitioner,

Case No. _____
(TFB NO.)

v.

_____RESPONDENT_____,
Respondent.
_____ /

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct proceedings herein according to Rule 10-7.1(b)(6), Rules Regulating The Florida Bar, the following proceedings occurred:

-----GIVE BRIEF SUMMARY OF PROCEDURAL HISTORY----- All of the aforementioned pleadings, attachments thereto, and exhibits received in evidence, and this report constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Statement. Respondent, at all times material herein, was not and is not a member of The Florida Bar, and was not therefore licensed to engage in the practice of law in the State of Florida.

B. Narrative Summary of Case.

-----GIVE FACTUAL SUMMARY OF ALLEGATIONS OF FACT AND FINDINGS OF FACT-----

III. CONCLUSION OF LAW. Based upon the foregoing findings of fact, the undersigned referee makes the following conclusions of law:

IV. RECOMMENDATIONS.

Based upon the foregoing findings of fact, it is the recommendation of the undersigned Referee as follows:

A. That --RESPONDENT-- be found to have engaged in the unlicensed practice of law in the State of Florida.

OR

A. That --RESPONDENT-- has not engaged in the unlicensed practice of law in the State of Florida.

B. That --RESPONDENT-- be restrained and enjoined from ---GIVE BRIEF STATEMENT OF ACTS ENGAGED IN--- and from otherwise engaging in the practice of law in the State of Florida until such time as --RESPONDENT-- is duly licensed to practice in this state.

OR

B. That Petitioner's request for an injunction is hereby denied.

PARAGRAPHS C, D, E AND V SHOULD BE USED ONLY IF THE REFEREE HAS FOUND FOR THE PETITIONER.

C. That a civil penalty in the amount of _____ be imposed against Respondent. In making this recommendation, the undersigned considered the following evidence:

LIST ALL EVIDENCE CONSIDERED INCLUDING THE RESPONDENT'S FAILURE TO MEET THE BURDEN OF SHOWING AN INABILITY TO PAY

The civil penalty shall be made payable to the Supreme Court of Florida and mailed to the Bar's counsel of record within the time period ordered by the Supreme Court of Florida.

OR

C. That Respondent does not have the ability to pay a civil penalty, therefore, no penalty is recommended. In making this recommendation, the undersigned considered the affidavit filed by the

Respondent and the statutory criteria used by the clerk of court when determining indigent status and the applicable statutory criteria considered by a court when reviewing that determination.

D. That the Respondent be ordered to pay restitution to: ___name(s) of complainant(s)___ in the amount of _____ by __date__, respectively, which __shall or shall not__ bear interest at the legal rate provided for judgments in this state. The restitution shall be made payable as specified herein and mailed to the Bar's counsel of record within the time period ordered by the Supreme Court of Florida.

E. That the costs of this proceeding be taxed against Respondent.

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

I find the following costs were reasonably incurred by The Florida Bar:

1.	Investigative Costs	\$____.____
2.	Court Reporter Fees	____.____
3.	Copy Costs	____.____
4.	Telephone Charges	____.____
5.	Fees for Translation Service	____.____
6.	Witness expenses, including travel & out-of-pocket expenses	____.____
7.	Travel & out-of-pocket expenses of the referee	____.____
8.	Any other costs which may properly be taxed in civil litigation	____.____
	TOTAL	\$____.____

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final.

Dated this _____ day of _____, ____.

NAME, REFEREE

ADDRESS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to _____, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399, and that copies were mailed by regular U.S. Mail to UPL Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, ---COUNSEL FOR THE FLORIDA BAR--- at _____ and ---RESPONDENT OR RESPONDENT'S COUNSEL--- at _____, this _____ day of _____, _____.

NAME, REFEREE

PLEASE NOTE THAT THIS IS AN EXAMPLE ONLY. YOUR CASE MAY REQUIRE ADDITIONAL TERMS TO BE INCLUDED IN THE STIPULATION.

Form 7
(Statement Of Costs Filed by The Florida Bar)

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner

v. _____
RESPONDENT _____,
Respondent.

CASE NO. _____

STATEMENT OF COSTS

Investigative Costs	\$ _____.
Court Reporter Fees	\$ _____.
Copy Costs	\$ _____.
Telephone Charges	\$ _____.
Fees for Translation Service	\$ _____.
Witness expenses, including travel & out-of-pocket expenses	\$ _____.
Travel & out-of-pocket expenses of the referee	\$ _____.
Any other costs which may properly be taxed in civil litigation	\$ _____.
Total	\$ _____.

Respectfully submitted,

NAME _____

TITLE _____

BAR # _____
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been sent by U.S. mail to _____ NAME AND ADDRESS OF RESPONDENT _____ OR COUNSEL _____, this _____ day of _____, _____.

ATTORNEY

PLEASE NOTE THAT THIS IS AN EXAMPLE ONLY. YOUR CASE MAY REQUIRE ADDITIONAL TERMS TO BE INCLUDED IN THE STIPULATION.

**Form 8
(Index of Record)**

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner

v.

____ RESPONDENT _____,
Respondent.

CASE NO. _____

INDEX OF RECORD

<u>Tab</u>	<u>Pleading</u>	<u>Date Filed</u>
1.	Petition	
2.	Order to Show Cause	
3.	Answer	
4.	Order Appointing Referee	
5.	Order Setting Case Management Conference	
6.	Order For Trial	
7.	Transcript of Hearing	
8.	Exhibits Received in Evidence	
9.	Report of Referee	

Select Year:

The 2009 Florida Statutes

<u>Title V</u>	<u>Chapter 27</u>	<u>View Entire</u>
JUDICIAL	STATE ATTORNEYS; PUBLIC DEFENDERS; RELATED	<u>Chapter</u>
BRANCH	OFFICES	

27.52 Determination of indigent status.--

(1) APPLICATION TO THE CLERK.--A person seeking appointment of a public defender under s. [27.51](#) based upon an inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(a) The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts.
3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
4. All liabilities and debts.
5. If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds.

The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.

(b) An applicant shall pay a \$50 application fee to the clerk for each application for court-appointed counsel filed. The applicant shall pay the fee within 7 days after submitting the application. If the applicant does not pay the fee prior to the disposition of the case, the clerk shall notify the court, and the court shall:

1. Assess the application fee as part of the sentence or as a condition of probation; or
2. Assess the application fee pursuant to s. 938.29.

(c) Notwithstanding any provision of law, court rule, or administrative order, the clerk shall assign the first \$50 of any fees or costs paid by an indigent person as payment of the application fee. A person found to be indigent may not be refused counsel or other required due process services for failure to pay the fee.

(d) All application fees collected by the clerk under this section shall be transferred monthly by the clerk to the Department of Revenue for deposit in the Indigent Criminal Defense Trust Fund administered by the Justice Administrative Commission, to be used to as appropriated by the Legislature. The clerk may retain 2 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue.

(e)1. The clerk shall assist a person who appears before the clerk and requests assistance in completing the application, and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.

2. If the person seeking appointment of a public defender is incarcerated, the public defender is responsible for providing the application to the person and assisting him or her in its completion and is responsible for submitting the application to the clerk on the person's behalf. The public defender may enter into an agreement for jail employees, pretrial services employees, or employees of other criminal justice agencies to assist the public defender in performing functions assigned to the public defender under this subparagraph.

(2) DETERMINATION BY THE CLERK.--The clerk of the court shall determine whether an applicant seeking appointment of a public defender is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

(b) Based upon its review, the clerk shall make one of the following determinations:

1. The applicant is not indigent.

2. The applicant is indigent.

(c)1. If the clerk determines that the applicant is indigent, the clerk shall submit the determination to the office of the public defender and immediately file the determination in the case file.

2. If the public defender is unable to provide representation due to a conflict pursuant to s. 27.5303, the public defender shall move the court for withdrawal from representation and appointment of the office of criminal conflict and civil regional counsel.

(d) The duty of the clerk in determining whether an applicant is indigent shall be limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter at the next scheduled hearing. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.--If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.

(4) REVIEW OF CLERK'S DETERMINATION.--

(a) If the clerk of the court determines that the applicant is not indigent, and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether the applicant has been released on bail in an amount of \$5,000 or more.
2. Whether a bond has been posted, the type of bond, and who paid the bond.
3. Whether paying for private counsel in an amount that exceeds the limitations in s. 27.5304, or other due process services creates a substantial hardship for the applicant or the applicant's family.
4. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and, if the applicant is indigent, shall appoint a public defender, the office of criminal conflict and civil regional

counsel, or, if appropriate, private counsel:

1. The applicant is not indigent.
2. The applicant is indigent.

(5) INDIGENT FOR COSTS.--A person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court, on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.

(a) The person must submit to the court:

1. The completed application prescribed in subsection (1).
2. In the case of a person represented by counsel, an affidavit attesting to the estimated amount of attorney's fees and the source of payment for these fees.

(b) In reviewing the motion, the court shall consider:

1. Whether the applicant applied for a determination of indigent status under subsection (1) and the outcome of such application.
2. The extent to which the person's income equals or exceeds the income criteria prescribed in subsection (2).
3. The additional factors prescribed in subsection (4).
4. Whether the applicant is proceeding pro se.
5. When the applicant retained private counsel.
6. The amount of any attorney's fees and who is paying the fees.

(c) Based upon its review, the court shall make one of the following determinations:

1. The applicant is not indigent for costs.
2. The applicant is indigent for costs.

(d) The provision of due process services based upon a determination that a person is indigent for costs under this subsection must be effectuated pursuant to a court order, a copy of which the clerk shall provide to counsel representing the person, or to the person directly if he or she is proceeding pro se, for use in requesting payment of due process expenses through the Justice Administrative Commission.

Private counsel representing a person declared indigent for costs shall execute the Justice Administrative Commission's contract for counsel representing persons determined to be indigent for costs.

(6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent parent or legal guardian of an applicant who is a minor or an adult tax-dependent person shall furnish the minor or adult tax-dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to chapter 985, a criminal prosecution in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to this section, s. 27.40, or s. 27.5303. When the public defender, the office of criminal conflict and civil regional counsel, a private court-appointed conflict counsel, or a private attorney is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the nonindigent parents or legal guardian of the minor or adult tax-dependent person. The lien is enforceable as provided in s. 27.561 or s. 938.29.

(7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.--

(a) If the court learns of discrepancies between the application or motion and the actual financial status of the person found to be indigent or indigent for costs, the court shall determine whether the public defender, office of criminal conflict and civil regional counsel, or private attorney shall continue representation or whether the authorization for any other due process services previously authorized shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent or indigent for costs, the court shall order the public defender, office of criminal conflict and civil regional counsel, or private attorney to discontinue representation and revoke the provision of any other authorized due process services.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent or indigent for costs, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 3, ch. 63-409; s. 1, ch. 70-57; s. 4, ch. 73-334; s. 1, ch. 77-99; s. 1, ch. 77-378; s. 8, ch. 79-

164; s. 3, ch. 80-376; s. 1, ch. 81-273; s. 139, ch. 95-147; s. 1, ch. 96-232; s. 4, ch. 97-107; s. 28, ch. 97-271; s. 6, ch. 98-280; s. 3, ch. 2001-122; s. 16, ch. 2003-402; s. 9, ch. 2004-265; s. 3, ch. 2005-236; s. 6, ch. 2007-62; s. 4, ch. 2008-111.

Copyright © 1995-2010 The Florida Legislature • [Privacy Statement](#) • [Contact Us](#)

IN THE SUPREME COURT OF FLORIDA

The Florida Bar
vs.

Case No. _____

Respondent

AFFIDAVIT FOR DETERMINATION OF CIVIL INDIGENT STATUS

- I have** _____ dependents. *(Do not include children not living at home and do not include a working spouse or yourself.)*
- I have a take home income of \$** _____ paid () weekly () bi-weekly () semi-monthly () monthly () yearly. *(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court ordered support payments.)*
- I have other income paid** () weekly () bi-weekly () semi-monthly () monthly () yearly: *(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No.")*

Social Security benefits.....	Yes \$ _____	No _____
Unemployment compensation.....	Yes \$ _____	No _____
Union Funds.....	Yes \$ _____	No _____
Workers compensation.....	Yes \$ _____	No _____
Retirement/pensions.....	Yes \$ _____	No _____
Trusts or gifts.....	Yes \$ _____	No _____
Veterans' benefits.....	Yes \$ _____	No _____
Child support or other regular support from family members/spouse.....	Yes \$ _____	No _____
Rental income.....	Yes \$ _____	No _____
Dividends or interest.....	Yes \$ _____	No _____
Other kinds of income not on the list.....	Yes \$ _____	No _____

- I have other assets:** *(Circle "Yes" and fill in the value of the property, otherwise circle "No.")*

Cash.....	Yes \$ _____	No _____
Bank account(s).....	Yes \$ _____	No _____
Certificates of deposit or money market accounts.....	Yes \$ _____	No _____
*Equity in Motor vehicles/Boats/ Other tangible property.....	Yes \$ _____	No _____
Savings.....	Yes \$ _____	No _____
Stocks/bonds.....	Yes \$ _____	No _____
*Equity in Real estate (excluding homestead).....	Yes \$ _____	No _____

*include expectancy of an interest in such property

5. **I have total liabilities and debts of \$ _____ as follows:**
Motor Vehicle \$ _____, Home \$ _____, Other Real Property \$ _____,
Child Support paid direct \$ _____, Credit Cards \$ _____,
Medical Bills \$ _____, Cost of medicines (monthly) \$ _____,
Other \$ _____.

6. **I have a private lawyer in this case.....** Yes No

A person who knowingly provides false information to the court in seeking a determination of indigent status under s.57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s.775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this _____ day of _____, _____

Signature of applicant for indigent status

Print full legal name _____
Address _____
City, State, Zip _____
Phone Number _____
Date of Birth _____
Driver's license or
ID Number _____