



**THE FLORIDA BAR**

# **REFEREE MANUAL**

*Revised: July, 2015*



## THE FLORIDA BAR

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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.

The Supreme Court of Florida's rules, effective February 1, 2010, created new requirements for referees. 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. 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 the record and index and certify that the record is complete. Pursuant to Rule 3-7.6(n)(3), bar counsel shall assist the referee with the preparation of the index and record. 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 <http://www.floridabar.org> under the Lawyer Regulation tab.

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 Court's regulation of the Bar is carried out through the Rules Regulating The Florida Bar, which establish The Florida 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. 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, 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

At the time of this writing 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 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\(l\)](#).

(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\(j\)](#).

4. TRIAL BY REFEREE

(a) PROCEDURES

Pursuant to the above procedures, a complaint is prepared by bar counsel and is filed with the Supreme Court of Florida. 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 prior to 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 \(2\)](#). In all cases, the referee shall require the parties to appear at a case management conference within 60 days of appointment. The referee shall then 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 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 shall have no rights other than those of any other witness. See [Rule 3-7.6\(k\)](#).

(b) VENUE

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

(c) PROCESS

The mailing by registered or certified mail of papers or notices described in the Rules of Discipline, to the last mailing address of an attorney shown in the official records of The Florida Bar, "shall be" sufficient notice and service. 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 a finding of guilt based thereon. 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\(m\)\(1\)\(D\)](#).

(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 shall 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**

Prior to the receipt of evidence by the referee, the Board of Governors may terminate disciplinary proceedings before the referee. 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 allegations.

The rule 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 been the subject of a prior diversion within 7 years is not eligible.

(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\(h\)\(2\)](#).

(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\(h\)\(3\)](#). Annually, the Bar will determine the costs of the practice and professionalism enhancement program(s) and publish the amount of the costs that will be assessed against and paid by the respondent. See [Rule 3-5.3\(l\)](#). The current fee for most professionalism enhancement programs is \$750.

Diversion/Discipline Consultation Service charges \$1,750 for all discipline-related cases. The respondent pays this amount directly to The Florida Bar. FLA, Inc., costs are described below in 9(a).

Continuing Legal Education Seminar costs are based on the seminar the respondent is required to attend. Those costs vary and are paid directly to CLE Registrations upon registration to attend the seminar.

**9. DISCIPLINE**

If a referee finds the respondent guilty of any rule violation, a separate hearing to determine the appropriate sanction may be held. The sanction hearing may immediately follow the guilt phase or may be held at a later date. At the sanction hearing, the referee shall consider all applicable aggravating and mitigating factors, relevant case law, and the Florida Standards for Imposing Lawyer Sanctions. The Standards for Imposing Lawyer Sanctions may be accessed at <http://www.floridabar.org> under the Lawyer Regulation tab, or in Florida Rules of Court.

Bar counsel, however appointed, at all times shall be subject to the direction of the Board of Governors. Any recommendation made by bar counsel as to discipline is not binding upon the Board of Governors. See [Rules 3-7.5\(f\)](#) and [3-7.9](#).

Pursuant to [Rule 3-5.1](#), when a judgment has been entered finding a member of The Florida Bar 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 of not less than 6 months or more than 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 order of the Supreme Court. Probationary conditions may include: 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 drug/alcohol rehabilitation or mental health counseling. 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 order to effectively monitor drug and alcohol addiction and mental health status, referrals to FLA, Inc. must require the respondent to enter into a rehabilitation contract with FLA, Inc. FLA, Inc. charges include a one-time registration fee of \$250 and a monthly monitoring fee of \$100.

In cases where FLA, Inc. is not a requirement of probation, The Florida Bar will charge a monthly monitoring fee of \$100.

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

An admonishment may be recommended only where minor misconduct is involved. Minor misconduct has been found to be 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 [Rule 3-5.1\(a\)](#). 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." It should be noted that the term "Not to be Published" does not have the same meaning as "confidential." The Florida Bar may post information regarding specific orders of admonishment on its web site and may provide information regarding an admonishment upon inquiry. See [Rule 3-5.4\(d\)](#).

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

This type of reprimand is reported in the Southern Reporter and the news media, and also may be administered by appearance before the Supreme Court of Florida, Board of Governors, referee, or any local judge as ordered by the court. The Florida Bar publishes information on these cases and

the Court 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 a former client is reimbursed). No suspension for a definite period of time shall be in excess of 3 years. A suspension for more than 90 days shall require proof of rehabilitation and may require passage of all or part of the bar exam. This means that the respondent, upon 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 on these cases and the Court releases these matters for publication. An attorney who receives any suspension must comply with [Rule 3-5.1\(h\)](#)(Notice to Clients). During suspension, the respondent shall continue to be a member of The Florida Bar, but without the privilege of practicing.

(e) DISBARMENT [[Rule 3-5.1\(f\)](#)] and REVOCAION [[Rule 3-7.12](#)]

A judgment of disbarment terminates the respondent's status as a member of the Bar. No application for admission may be tendered within 5 years after the date of disbarment or such longer period as the Supreme Court of Florida may determine. A former member who has been disbarred may only be readmitted upon full compliance with the rules and regulations governing admission to the Bar. Readmission after disbarment requires application to the Florida Board of Bar Examiners. This means the applicant would have to successfully pass the bar examination in addition to other requirements imposed upon all applicants. See [Rules of the Supreme Court Relating to Admissions to the Bar](#). Permanently disbarred former members may not be readmitted. 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.

(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. Fees otherwise prohibited by the Rules Regulating The Florida Bar may be ordered forfeited to The Florida Bar Clients' Security Fund to be disbursed in accordance with its rules and regulations.

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

If it is found that the respondent has received an excessive, illegal, or prohibited fee or that respondent has converted trust funds or property, respondent may be ordered, or may agree, to pay restitution to a complainant or other person. See [Rules 3-5.1\(j\)](#), [4-1.5](#), and [5-1.1](#).

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 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).

(h) **COSTS** [[Rule 3-7.6\(q\)](#)]

Discipline costs are \$1,250 administrative fee plus actual costs as listed in [Rule 3-7.6\(q\)](#). When the Bar is successful, in whole or in part, the referee may assess the Bar's costs against the respondent.

**10. INCOMPETENCY OR INCAPACITY NOT RELATED MISCONDUCT**

Where an attorney is found to be incapable of practicing law or adjudged incompetent, the attorney may be placed on an inactive list for incapacity not related to misconduct and shall refrain from the practice of law even though no misconduct is alleged. In order to become eligible to practice law, the attorney must file a Petition for Reinstatement. See [Rule 3-7.13](#).

**11. REFEREE'S REPORT**

Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts (if a transcript is ordered), whichever is later, the referee shall prepare a report. See [Rule 3-7.6\(m\)\(1\)](#). The referee shall provide written notice to the parties that the report of referee has been completed. See [Rule 3-7.6\(q\)\(5\)](#). Within 15 days after written notice by the referee that the report of referee has been completed, a party shall file a statement of costs incurred and a request for payment of same. Failure to timely file a motion, without good cause shown, shall be considered as a waiver of the right to request reimbursement of costs or to object to a request for reimbursement of costs. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Because costs may not be assessed against the respondent unless the Bar is successful in some part and because costs may not be assessed against the Bar unless the referee finds there is no justiciable issue of law or fact, there is no requirement that a motion to assess costs before the referee be filed when doing so is not appropriate. See [Rule 3-7.6\(q\)\(5\)](#).

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 objection has run. See [Rule 3-7.6\(q\)\(5\)](#).

The Court requires that each report of referee be accompanied by an indexed record. See [Rule 3-7.6\(n\)\(3\)](#). The referee must certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record along with the report of referee with the clerk of the Supreme Court of Florida.

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.

## **12. FILINGS BY THE REFEREE**

### **A. Motions, Orders, or Other**

Any filings by the referee to the Supreme Court, except the Report of Referee, must be filed in hard copy via a mail service. In addition, a copy of that filing should be sent to bar counsel, staff counsel, and to respondent or respondent's counsel in a manner agreed upon by the referee and parties.

### **B. Report of Referee**

A comprehensive report of referee under [Rule 3-7.6\(m\)](#) is beneficial to the Supreme Court 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 facts should be clearly set forth. Next, 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 the [Court Comment to Rule 3-7.6](#).

### **C. Filing Process and Bar Counsel Assistance**

The referee's report and the record, including pleadings, the transcript (if a transcript is ordered), and all exhibits, are sent to the Supreme Court of Florida by the referee. The record is expected to be transmitted to the Court in a well-organized, properly indexed form. Per [Rule 3-7.6\(n\)\(3\)](#), bar counsel is available to assist with preparing the record and the index. Additionally, a written certification from the referee as to the record is required to be submitted to the Court. A PowerPoint describing this process is available from bar counsel and a sample certification form is included in the appendix to this manual.

Copies of the referee's report are served on all parties. If the respondent is not represented by counsel, a copy of the report must be sent to the respondent. In addition, a copy of the certification and the index of the record should be sent to bar counsel and to staff counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee 32399-2300. See [Rules 3-7.6\(m\)\(2\) and 3-7.6\(n\)](#).

Additionally, all referee reports must be submitted to the Court by e-mail to [e-file@flcourts.org](mailto:e-file@flcourts.org). This e-mail address is for this purpose only. The Clerk's Office will not respond to e-mails sent to this address. Pleadings sent to this address will not be considered a filing. The subject line of the e-mail shall contain the Supreme Court case number, if one has been assigned, or the style of the case, if a case number has not been assigned, in substantially the following format: "Filing in SC00-0" or "Filing in Fla. Bar v. Roe." The document must be e-mailed the same day the original paper copy of the document is served. The Court requires the report of referee to be prepared in 14 point Times New Roman type, and provided in Microsoft Word format. The Florida Bar may assist in this respect, if the referee requests. A hard copy of the referee's report shall be attached to the paper submission of the record to the Court.

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

\_\_\_\_\_

Respondent.

\_\_\_\_\_ /

Supreme Court Case

No. SC \_\_\_\_\_

The Florida Bar File

No. \_\_\_\_\_

**CERTIFICATE BY REFEREE**

I, \_\_\_\_\_, am a Judge in \_\_\_\_\_ County in the \_\_\_\_\_

Judicial Circuit of Florida. In compliance with the Rules Regulating The Florida

Bar, Rule 3-7.6. Procedures before a referee, I hereby certify the following:

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

\_\_\_\_\_ I hereby certify that I have received the referee training materials approved by the Supreme Court of Florida and certify to Chief Judge \_\_\_\_\_ that I have reviewed these training materials as required by said Rule.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Judge), Referee

Copies Furnished to:

The Honorable \_\_\_\_\_, Chief Judge, \_\_\_\_\_ Judicial Circuit,  
\_\_\_\_\_  
(Physical Address and  
Email Address)

\_\_\_\_\_, Respondent of Counsel for Respondent,  
\_\_\_\_\_  
(Physical Address and Email Address)

Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130,  
1300 Concord Terrace, Sunrise, Florida 33323, Email [aquintel@flabar.org](mailto:aquintel@flabar.org)

\_\_\_\_\_, Bar Counsel, The Florida Bar, Orlando Branch Office, The  
Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050,  
Email \_\_\_\_\_, [orlandooffice@flabar.org](mailto:orlandooffice@flabar.org)

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case

No. SC \_\_\_\_\_

The Florida Bar File

No. \_\_\_\_\_

\_\_\_\_\_ ,

Respondent.

\_\_\_\_\_ /

**NOTICE OF HEARING**

TO: \_\_\_\_\_ (Respondent)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Email)

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

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

I HEARBY CERTIFY that a copy of the foregoing Notice was (MAILED/EMAILED) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to the above named addressee(s).

\_\_\_\_\_,  
(Judge)  
(Circuit or County)  
(Address)

**[NOTE: Where respondent is not represented by counsel, respondent's copy should be served by certified mail, return receipt requested.]**

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

\_\_\_\_\_,

Respondent.

\_\_\_\_\_ /

Supreme Court Case  
No. SC \_\_\_\_\_

The Florida Bar File  
No. \_\_\_\_\_

**REPORT OR REFEREE**

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On [date formal complaint filed], The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. On [final hearing date], a final hearing was held in this matter. 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.

II. FINDINGS OF FACT

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 of Florida.

B. Narrative Summary Of Case.

[Insert Summary of Fact]

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

III. RECOMMENDATIONS AS TO GUILT.

I recommend that 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.”]

IV. CASE LAW

I considered the following case law prior to 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.]

V. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

[INSERT]

VI. AGGRAVATING AND MITIGATING FACTORS

I considered the following factors prior to recommending discipline:

[Note: See Standards 9.0, 11.0 and 12.0]

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

VIII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

- A. Personal History of Respondent:

Age: [Years Old]

Date admitted to the Bar:

- B. Aggravating Factors:

Prior Discipline:

- C. Mitigating Factors:

IX. 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	\$

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and 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), Referee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been e-mailed to The Honorable John A. Tomasino, Clerk, Supreme Court of Florida, at [e-file@flcourts.org](mailto:e-file@flcourts.org), and mailed to 500 South Duval Street, Tallahassee, Florida 32301; a copy has been e-mailed to (Name of Bar Counsel), Bar Counsel, The Florida Bar, (Address and e-mail address); a copy has been e-mailed to (Respondent or Respondent’s Counsel), (his/her record Bar address and e-mail address); and a copy has been e-mailed to Adria Quintela, Staff Counsel, at her Record Bar address, The Florida Bar, Lakeshore Plaza II, 1300 Concord Terrace, Sunrise, FL 33323, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_,  
(Judge)  
(Circuit or County)  
(Address)

**[NOTE: The report must be signed and dated before being submitted to the Florida Supreme Court]**

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case  
No. SC \_\_\_\_\_

The Florida Bar File  
No. \_\_\_\_\_

\_\_\_\_\_ ,

Respondent.

\_\_\_\_\_ /

**CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

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

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. 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 such misconduct, Respondent agrees to the imposition of [Agreed Discipline].

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

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

5. Respondent acknowledges that [he/she] 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, Respondent hereby waives any objections relative to the denial of the same.

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

7. 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, Respondent agrees to pay all reasonable costs incurred by The Florida Bar in bringing this case, including administrative costs. Respondent further agrees not to seek avoidance of payment of those costs through bankruptcy.

8. Should the Supreme Court of Florida approve this Conditional Guilty Plea for Consent Judgment, Respondent hereby agrees and acknowledges that same will not be the subject of future modification.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Attorney,  
Florida Bar No.

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

\_\_\_\_\_

Respondent.

\_\_\_\_\_ /

Supreme Court Case

No. SC \_\_\_\_\_

The Florida Bar File

No. \_\_\_\_\_

**WITNESS SUBPOENA FOR TRIAL**

The State of Florida:

TO: \_\_\_\_\_ (Respondent)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Email)

YOU ARE HEREBY 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 shall respond to this subpoena as directed.

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

\_\_\_\_\_

(Judge), Referee

**RETURN OF SERVICE**

I HEREBY CERTIFY THAT THE FOREGOING 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 pursuant to 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

THE FLORIDA BAR,

Complainant,

v.

Supreme Court Case  
No. SC \_\_\_\_\_

The Florida Bar File  
No. \_\_\_\_\_

\_\_\_\_\_,

Respondent.

\_\_\_\_\_ /

**CERTIFICATION OF RECORD AND INDEX**

**I HEREBY CERTIFY** the above record and index are complete pursuant to

R. Regulating Fla. Bar 3-7.6(n)(3).

Dated this \_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_,

(Judge)  
(Circuit or County)  
(Address)

Original to Supreme Court with Referee's Original File.

Copies of only the Index and this Certification to:

The Florida Bar Counsel, The Florida Bar, (physical address and e-mail address)

Respondent/Counsel for Respondent (physical address and e-mail address)

Staff Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, via e-mail [aquintel@flabar.org](mailto:aquintel@flabar.org)