

Frequently Asked Questions

Procedure

Q. How long will this case take to try?

A. Most discipline trials can be concluded in 1 to 2 days. Bar counsel and respondent or respondent's counsel should be consulted for estimates in a particular case.

Q. Where will the hearing be held?

A. By rule, venue of the trial is in one of the following locations:

- the county in which the alleged offenses occurred (preferred); or
- the county where the lawyer's primary office is located; or
- the county where the lawyer resides.

Q. Are separate hearings required for guilt and discipline rulings?

A. The rules are silent on this point. Practice has been to bifurcate proceedings and address guilt at a first noticed hearing, and if a finding of guilt is entered, address the appropriate sanction at a later noticed hearing for that purpose.

Evidence

Q. Is hearsay evidence admissible?

A. Yes, by case law. See The Florida Bar v. Weed, 559 So. 2d 1094 (Fla. 1990); The Florida Bar v. Vannier, 498 So.2d 896 (Fla.1986).

Q. Will I receive evidence about prior discipline?

A. Yes, but only after a finding of guilt is entered (unless the issue of prior discipline is raised by the respondent lawyer). Rule 3-7.6(m)(1)(D).

Attorney Fees, Costs, & Restitution

Q. Who pays my travel expenses?

A. The referee's travel expenses may be assessed in discipline hearings. Rule 3-7.6(q)(1)(G). If requested, those expenses may be reimbursed by the Bar and the Bar will seek an assessment against the respondent if successful in the case. Rules 3-7.6(m)(1)(E), 3-7.6(q)(1) & 3-7.6(q)(3)

Q. Are attorney fees assessed in Bar disciplinary cases?

A. No. The Florida Bar v. Chilton, 616 So. 2d 449 (Fla. 1993)

Q. Are costs assessed in Bar disciplinary cases?

A. Yes, with limits. Please see the following:

Rule 3-7.6(q)(1) re items that may be assessed;
Rule 3-7.6(q)(2) re discretion to assess costs;
Rule 3-7.6(q)(3) re assessment of the Bar's costs; and
Rule 3-7.6(q)(4) re assessment of respondent's costs.

Q. Can I recommend restitution in a Bar case?

A. Yes, limited by Rule 3-5.1(i) to:

- the amount by which a fee is clearly excessive;
- the amount of an illegal or prohibited fee; or
- the amount of conversion established in disciplinary proceedings.



Report and Record

Q. When must my report be filed?

A. Two measures define when a report of referee is due:

- Rule 3-7.6(m)(1) allows the report to be filed within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later. The chief justice may extend this time and failure to file the report within this time does not deprive the referee of jurisdiction.
- By practice, the order appointing the referee allows 180 days from the date of appointment for the referee to file the report.

Q. Who prepares the report?

A. The rules are silent on this point. By custom the referee may prepare the report or direct the Bar or respondent to do so.

Q. What is the electronic filing requirement?

A. Florida Supreme Court Administrative Orders AOSC02-40 and AOSC04-84 require the referee's report to be filed electronically, in addition to by traditional paper copy.

Q. Who prepares the record?

A. The referee currently has this duty. Rule 3-7.6(n). An amendment is pending to Rule 3-7.6(n) creating subdivision (3) obligating counsel for the Bar to assist in the preparation of the record (Case No. SC06-736, pet. filed 04/26/2006).