

REFEREE MANUAL



THE FLORIDA BAR

Revised: May, 2010



THE FLORIDA BAR

REFEREE MANUAL

DIRECTORY OF BRANCH OFFICES

TALLAHASSEE BRANCH

The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

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MEMORANDUM

TO: Referees

FROM: Thomas D. Hall, 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 new rules, effective Feb. 1, 2010, create 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. This guide is part of those training materials. The updated Rules Regulating The Florida Bar can be found at www.FloridaBar.Org.

This guide is designed to summarize trials by referee 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 grievance proceedings.

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 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 State Bar Assn., 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 the rejection of an admonishment by the respondent. See Rule 3-7.4(n). Other exceptions are listed in Rule 3-3.2(b).

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

Please note that the Rules of Professional Conduct not only contain substantive rules, but also have comments intended to fully 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 Rule 3-3.2(b)(1) and 3-7.5(c).

(2) GRIEVANCE COMMITTEES

At the time of this writing there 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 nonlawyers. At least one-third of the committee membership must be nonlawyers. 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 Rule 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 nonadversarial. Technical rules of evidence do not apply to grievance committee proceedings. See Rule 3-7.4(d).

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

(3) PROBABLE CAUSE

Probable Cause is defined as:

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

4. TRIAL BY REFEREE

(a) PROCEDURES

When a finding of probable cause has been made by the board of governors, a grievance committee, or a grievance committee's report of minor misconduct is rejected, 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 material 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 nonjury 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 Florida Bar v. Vannier, 498 So. 2d 896 (Fla. 1986); The Florida 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).

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).

(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, is 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) and see also Chapter 38, Florida Statutes.

(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 Florida Bar v. McCain, 361 So. 2d 700, 706 (Fla. 1978); The Florida Bar v. Rayman, 238 So. 2d 594, 598 (Fla. 1970).

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 The Florida Bar v. Junkin, 89 So. 2d 481 (Fla. 1956). See also The Florida 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 Florida 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 Florida Bar v. McCain, 330 So. 2d 712 (Fla. 1976); In Re The Florida 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 pursuant to applicable law. See Rule 3-7.1(d).

6. CONSENT JUDGMENT

If a respondent desires to plead guilty after a formal complaint has been filed, bar 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. Law Office Management Assistance Service (LOMAS)
3. Florida Lawyers Assistance, Inc. (FLA, Inc.)
4. Continuing Legal Education (CLE) Seminars
5. Advertising Workshop
6. Anger 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(1). The current fee for most professionalism enhancement programs is \$750.

LOMAS charges \$1,750.00 for all discipline related cases. The respondent pays this amount directly to LOMAS. 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 discipline may be held. The discipline hearing may immediately follow the guilt phase or may be held at a later date. At the discipline 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 www.flabar.org under the Lawyer Regulation tab.

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 period of time of not less than 6 months or more than 3 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, LOMAS 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, mental health counseling, or unsupervised probation with 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 respondent to enter into a rehabilitation contract with FLA, Inc. FLA, Inc. charges include a one time registration fee of \$250.00 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) & (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 Florida 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, the referee or the 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 nor publish information in *The Florida Bar News* about admonishments. The Supreme Court of Florida does not release admonishments for publication by West's Publishing Company 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 by West's Publishing Company.

(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 (provided by The Florida Bar upon request); In Re Dawson, 131 So. 2d 472 (Fla. 1961); Petition of Wolf, 257 So. 2d 547 (Fla. 1972). The Florida Bar publishes information on these cases and the court releases these matters for publication by West's Publishing Company. An attorney who receives any suspension must comply with Rule 3-5.1(g).

(e) DISBARMENT [Rule 3-5.1(f)]

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 The Florida Bar v. Cooper, 429 So. 2d 1 (Fla. 1983) (court ordered disbarment for a period of twenty years). Permanently disbarred former members may not be readmitted.

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

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 or a respondent may accept a report of minor misconduct recommending forfeiture. See Rule 3-5.1(h); 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(i)]

If a disciplinary order finds 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 4-1.5 and Rule 5-1.1.

(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).

10. INCOMPETENCY OR INCAPACITY

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 and 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.

Except in cases arising from a felony conviction, by administrative order appointing the referee, the referee is given 180 days by the Supreme Court of Florida in which to file the report.

In cases arising from a felony conviction or determination of guilt, the Supreme Court will order a temporary suspension upon proof submitted by The Florida Bar that the member has been convicted of a felony. A lawyer who has been found guilty, but the adjudication of guilt has been withheld, is treated the same as a lawyer who has been adjudicated guilty. See Rules 3-7.2(a)(2) and 3-7.2(a)(3). If the suspended lawyer files a Petition to Modify or Terminate Suspension, the Court will appoint or direct the appointment of a referee who must hold a hearing within 7 days of appointment and submit a report and recommendation to the Supreme Court within 7 days of the hearing. These time limits may be waived by the referee or Supreme Court if a written request for waiver is made by the suspended lawyer. See Rule 3-7.2(k).

If the suspended lawyer does not file a Petition to Modify or Terminate Suspension, the Court will appoint or direct the appointment of a referee. The referee must hold a hearing and file a report and recommendation as to the appropriate sanction within 90 days of assignment. See Rules 3-7.2(h)(1) and 3-7.2(h)(2).

12. FILING THE REFEREE'S REPORT

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. 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 index of the record should be sent to bar counsel and a copy of the report to staff counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee 32399-2300. See Rule 3-7.6(m)(2).

All submissions of the report of referee to the court must be via e-mail. Electronic submissions via e-mail shall be attached to an e-mail sent to 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 Doe v. Roe." The document must be e-mailed the same day the original paper copy of the document is filed or served. The Court requires the report of referee to be prepared in 14 point Times New Roman type and accompanied and formatted in Word, if the referee has the technology to do so. The Florida Bar may assist in this respect, if the referee requests.

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, for the referee's recommendations concerning guilt and discipline. See the Court Comment to Rule 3-7.6.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. (Supreme Court Case No.)

v.

TFB File No. (Bar File No.)

(ATTORNEY,)

Respondent.

_____ /

NOTICE OF HEARING

TO: (BAR ATTORNEY) (ATTORNEY)
(ADDRESS) (ADDRESS)

TIME: (TIME a.m./p.m. (EST/CT), DAY, DATE, DATE)

PLACE: (Place)

PLEASE TAKE NOTICE that the above-styled matter will come on 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 HEREBY CERTIFY that a copy of the foregoing Notice was mailed 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,

Case No. (Supreme Court Case No.)

v.

TFB File No. (Bar File No.)

(ATTORNEY)

Respondent.

_____ /

REPORT OF THE 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 Requests for Admission in these proceedings. On [final hearing date], a final hearing was held in this matter. All of the aforementioned pleadings, responses thereto, 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

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 Facts.]

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty (or not guilty) of violating Rules [INSERT] of the Rules of Discipline of The Florida Bar; and Rules [INSERT] of the Rules of Professional Conduct of The Florida Bar.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

[INSERT]

V. CASE LAW

I considered the following case law prior to recommending discipline:

[INSERT]

VI. AGGRAVATING AND MITIGATING FACTORS

I considered the following case law prior to recommending discipline:

VI. 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.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1), 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:

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

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

- A. Grievance Committee Level

Court Reporter's Fees	\$(Amount)
Bar Counsel Travel	(Amount)

Investigative Costs	(Amount)
Photocopies	(Amount)
Subtotal	\$(Amount)

B. Referee Level

Administrative Costs	\$1,250.00
Court Reporter's Fees	(Amount)
Bar Counsel Travel	(Amount)
Investigative Costs	(Amount)
Photocopies	(Amount)
Subtotal	\$(Amount)

TOTAL \$(Amount)

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.

(Judge), Circuit/County Judge/Referee
(Address)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to KENNETH LAWRENCE MARVIN, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; (Name of Bar Counsel), Bar Counsel, The Florida Bar, (Address); and (Respondent or R's Counsel), Respondent, at (his/her record Bar address) of (R's or counsel's address), on this _____ day of _____, 20____.

(Judge), Referee

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No.(Supreme Court Case No.)

v.

TFB File No. (Bar File No.)

(ATTORNEY),

Respondent.

_____ /

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

Respondent, [NAME], files this Conditional Guilty Plea for Consent Judgment pursuant to Rule 3-7.9, Rules of Discipline of The Florida Bar, and says:

1. Respondent is, and at all times was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules 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]

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

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.

DATE

(ATTORNEY)
Respondent
(ADDRESS)
Number (Respondent's Bar No.)

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Case No. (Supreme Court Case No.)

v.

TFB File No. (Bar File No.)

(ATTORNEY),

Respondent.

_____ /

WITNESS SUBPOENA FOR TRIAL

The State of Florida:

TO: (NAME)
(ADDRESS)

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) DAY, 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.

Dated this _____ day of _____, 20__.

(JUDGE)
(Circuit/County) Judge/Referee
(ADDRESS)

Re: TFB File No. (Bar File No.)

RETURN OF SERVICE

I HEREBY CERTIFY that the foregoing subpoena
in TFB File No. (Bar File No.) was served
this _____ day of _____, 20____,
by _____.
(method of service)

Signature and 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).

OATH OF COURT REPORTER

Do you solemnly swear that you will faithfully and accurately report the present proceeding to the best of your ability as directed by the presiding officer herein,

ANSWER: "I do."

OATH OF WITNESS

(Name of Witness), before testifying, I will ask you to take an oath. If you believe criminal activity is involved, you should discuss the facts involving your testimony with the appropriate Federal or State prosecuting authorities. With this in mind, do you solemnly swear the testimony you will give in this proceeding will be the truth.

ANSWER: "I do."

OATH OF ACCUSED ATTORNEY (if appropriate)

I ADVISE YOU THAT THE OATH THAT I AM ABOUT TO ADMINISTER DOES NOT PREVENT YOU FROM REPORTING TO ANY STATE ATTORNEY OR U.S. ATTORNEY, ANY MATTERS INVOLVING YOUR TESTIMONY WHICH YOU BELIEVE TO BE PERTINENT TO SUCH PROSECUTING ATTORNEY'S DUTIES TO INVESTIGATE AND PROSECUTE CRIMINAL ACTIVITY. Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth.

ANSWER: "I do."