Acting as a Bar Referee
Course Outline
2020

This outline is heavily based on
The Florida Bar’s Overview of The Florida Bar Discipline System
PowerPoint, as updated and reorganized June 2020 by Judge Diana L. Moreland, Circuit Judge, Twelfth Judicial Circuit.

Unless otherwise indicated, all “Rule xxx” references in this document are to the Rules Regulating The Florida Bar. These rules are available at http://www.floridabar.org/. If you are reviewing this document online, you may access the Rules Regulating The Florida Bar by clicking this link. The rules are also in Florida Rules of Court—State (Thomson West 2020).

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A. **Jurisdiction**
   
   **See Art. V, §15, Fla. Const., and Rule 3-3.1**
   
   1. Exclusive to Florida Supreme Court
      
      Subject to supervision and review of Supreme Court, designated agencies shall have jurisdiction and powers necessary to conduct proper and speedy disposition of any disciplinary investigation or cause including:
      
      - compelling attendance of witnesses
      - to take or cause to be taken depositions of witnesses
      - to order production of books, records or other documentary evidence
      - to administer oaths
   
   2. Designated agencies
      
      - Board of governors
      - Grievance committees
      - Referees

B. **Confidentiality**
   
   **See Rule 3-7.1.**
   
   1. Scope
      
      - Records
         
         All records, including files, preliminary investigative reports, interoffice memoranda, and other proceedings under these rules, are the property of The Florida Bar. All are confidential and will not be disclosed except as provided by rule. Even when disclosure is permitted by rule, it will be limited to information concerning status of proceedings and any information that is part of public record. See Rule 3-7.1(a).
      
      - Unless otherwise ordered by the court or referee, or prohibited by Chapter 4 of the Rules Regulating The Florida Bar or case law on attorney-client privilege, nothing prohibits the complainant, respondent, or a witness from disclosing the existence of proceedings, or from disclosing any document or correspondence served on or provided to those persons. See Rule 3-7.1(a).
• Public record consists of the record before a grievance committee, referee, or the Florida Supreme Court, and any reports, correspondence, papers, recordings, and/or transcripts of proceedings furnished to, served on or received from the respondent or complainant. See Rule 3-7.1(b).

2. Disciplinary Matters
Disciplinary matters pending at initial investigation and grievance level are treated as confidential by The Florida Bar, except if one of the following findings has been made, see Rule 3-7.1(a)(2)–(a)(12):
• Minor misconduct
• Probable cause
• No probable cause
• Diversion referral or grievance mediation program
• Contempt cases
• Incapacity not involving minor misconduct upon filing of the petition with Supreme Court
• Petition for emergency suspension or probation
• Proceedings on determination or adjudication of guilt of criminal misconduct
• Professional misconduct in a foreign jurisdiction
• Reinstatement proceedings
• Disciplinary resignations and disciplinary revocations

C. Pre-Appointment of Referee
1. Florida Bar Counsel
See Rule 3-7.3.
   a. Intake/Screening/Investigation
      • Review inquiry (“written communication received by bar counsel questioning the conduct of a member of The Florida Bar,” see Rule 3-2.1(i)).
      • Confirm jurisdiction to investigate. See Rule 3-3.1.
      • Confirm complaint is written and under oath. See Rule 3-7.3(c).
      • Determine if, see Rule 3-7.3(a), there is:
         ○ Fee dispute which, if proven, would not constitute a clear violation of the Rules. Bar counsel may, with approval of complainant and respondent, refer the matter to The Florida Bar Grievance Mediation and Fee Arbitration Program.
         ○ Not a true violation – Would conduct, if proven, constitute a violation of the Rules warranting discipline? If not, further inquiry may be declined with notification to complainant
and respondent. This does not preclude further action or review.
  ○ True violation – Would conduct, if proven, constitute a violation of the rules? If so, inquiry shall become a disciplinary file and deemed a complaint. See Rule 3-7.3(b).
    ● Response
    ● Rebuttal
    ● Recommendation permitted by Bar Counsel if violation determined to be minor misconduct: See Rule 3-7.3(e)
      ○ Referral to Attorney/Consumer Assistance Program
      ○ Diversion program
      ○ Fee arbitration or mediation
      ○ Close/Decline file with notification to complainant and respondent
      ○ Referral to branch office
b. Disciplinary Investigation (Branch Office)
    ● Further investigation
    ● Recommendation/action:
      ○ Diversion program
      ○ Fee arbitration or mediation
      ○ Close file. This becomes public information. See Rule 3-7.3(g).
      ○ Seek concurrence of grievance committee. See Rule 3-7.3(d).
      ○ Referral to grievance committee if complaint in proper form.
2. Grievance Committee
   (78 grievance committees comprised of at least 1/3 nonlawyers, see Rule 3-7.4 and Rule 3-3.4(c)).
   a. Intake
      Intake may receive complaint directly from complainant or bar counsel. If received directly, must act to resolve within 10 days of receipt or forward to bar counsel. See Rule 3-7.4(b)
   b. Investigator Assigned
   c. Additional Investigation
   d. Hearing or Review
      ● Not a hearing concerning guilt, but to determine if probable cause exists, much like a grand jury
      ● Probable cause – a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, see Rule 3-2.1(k).
• Hearing itself is informal
• Respondent may be required to testify and produce evidence, see Rule 3-7.4(h)
• Complainant may be present if practicable, but has no right to appeal
e. Recommendation/Action
• Diversion program
• Fee arbitration or mediation
• Finding of no probable cause, see Rule 3-7.4(j)
• Finding of no probable cause with a letter of advice, see Rule 3-7.4(k)
• Finding of minor misconduct, which shall become final if not rejected within 15 days after service upon respondent, see Rule 3-7.4(m) and (n)
• Finding of probable cause with recommendation to designated board of governor reviewer, see Rule 3-7.4(l) and Rule 3-7.5.
  ○ Bar counsel shall prepare a record of investigation.
  ○ Bar counsel shall prepare a formal complaint.
  ○ Bar counsel shall file the formal complaint and seek appointment of a referee from the Supreme Court.

3. Board of Governors
See generally Rule 3-3.2.
a. Review of Report of Grievance Committee by Designated Reviewer
b. Reconsideration
Designated reviewer, within 30 days, may request in writing, copied to bar counsel, that the grievance committee reconsider, or the reviewer may refer the matter to the board of governors’ disciplinary review committee. See Rule 3-7.5(a). Failure of designated reviewer to timely request reconsideration or refer the matter makes the grievance committee’s action final. See Rule 3-7.5(a)(4).
c. Recommendation
Designated reviewer may recommend as part of its referral for reconsideration or review the following, see Rule 3-7.5(5):
  ● Grievance mediation program
  ● Fee arbitration program
  ● Closure of file by diversion to a component of the practice and professionalism enhancement program;
  ● Closure by entry of a finding of no probable cause
  ● Closure by entry of a finding of no probable cause with a letter of advice
- Finding of minor misconduct
- Finding of probable cause

d. Requests for Reconsideration
- Must be forwarded to chair of the grievance committee
- If the grievance committee agrees to reconsideration, the same procedural rules apply. See Rule 3-7.5(a)(1).
e. Board of Governors Disciplinary Review Committee
See Rule 3-7.5(b).
- Reviews those grievances committee matters referred by the designated reviewer.
- The committee may confirm, reject, or amend the recommendation of the designated reviewer, in whole or part.
- Recommendation report shall be final unless overruled by the board.
- The committee may make the same types of recommendations available to the designated reviewer.

f. Board of Governors
- The board of governors, by a majority vote, may confirm, reject, or amend the disciplinary review committee’s report. Action may be any of those available to the disciplinary review committee.
- A finding of no probable cause is final, and no further proceedings may be conducted in the matter by The Florida Bar, unless a reason arises at a later time to re-open the file. See Rule 3-7.5(e).
- The board may terminate disciplinary proceedings before a referee prior to the receipt of evidence. See Rule 3-7.5(f).

D. Consent Judgment
See Rule 3-7.9.
1. Before Complaint
Prior to the filing of a formal complaint, if a respondent states a desire to plead guilty, bar counsel shall confer with the designated reviewer. If either rejects the proposed consent judgment, the matter ends. If both approve the proposed consent judgment, the matter is referred to the board. Approval by the board results in acceptance of plea. If the board rejects, bar counsel shall prepare the formal complaint. See Rule 3-7.9(a)

2. After Formal Complaint
If a respondent states a desire to plead guilty to a formal complaint bar counsel shall confer with the designated reviewer. If either rejects the
proposed consent judgment, the matter ends. If both approve proposed consent judgment, respondent shall be notified and the referee informed. The referee has the power to accept or reject a proposed consent judgment. If the referee accepts, he/she shall enter a report and file it with the Supreme Court.

3. Board Certified Respondent
   If a respondent is board certified, the consent judgment shall address the effect of a plea on the certification and/or recertification.

4. Subject to Final Approval
   All consent judgments are subject to final approval by the Supreme Court.

E. Disbarment on Consent
   See Rule 3-7.9(e).
   1. Effect
      A respondent may surrender membership in The Florida Bar instead of defending allegations. Disbarment on consent shall have the same effect as disbarment elsewhere in rules.
   2. Admissions
      However, a respondent may enter into disbarment on consent without admitting to any facts or rule violations.

F. Plea
   See Rule 3-7.6(o).
   1. Before Complaint
      A plea tendered before filing of a formal complaint; shall be written, and forwarded to the grievance committee and bar counsel.
   2. After Complaint
      A plea tendered after the filing of a formal complaint shall be written, and filed with the referee.
   3. Unconditional Pleas
      Unconditional pleas shall not preclude review as to sanctions imposed.

G. Appointment of Referee – Criminal or Professional Misconduct
   1. Definitions
      See Rule 3-7.2(a).
      a. Judgment of Guilt
         Includes only adjudications of guilt.
      b. Determination of Guilt
         Includes:

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c. Convicted Lawyer
   Means a lawyer who has had a determination or judgment of guilt rendered against him/her.

2. Notice of Felony Charges
   See Rule 3-7.2(c).
   a. Member of Bar
      Within 10 days of the filing of a felony criminal charge being filed against a member of The Florida Bar, the member must notify the bar’s executive director and include a copy of the indictment or information.
   b. State Attorney
      The state attorney whose office is assigned to the criminal matter must provide a copy of the documents evidencing the determination or judgment of guilt of a felony offense to the bar’s executive director, if aware that the defendant is a member of The Florida Bar.

3. Notice of Determination or Judgment of Guilt
   See Rule 3-7.2(d) and (e).
   a. Trial Judge
      Within 10 days of the entry of the determination or judgment of guilt of a felony offense, the trial judge must provide a certified copy of the determination or judgment of guilt to the executive director of The Florida Bar.
   b. Clerk of Court
      Within 10 days of the entry of a determination or judgment of guilt of a felony offense, the clerk of that court must provide a certified copy of the determination or judgment to the executive director of The Florida Bar.
   c. State Attorney
      The state attorney whose office is assigned to that case must provide a copy of any document(s) evidencing the determination or judgment of guilt of a felony offense to the bar’s executive director, if aware that the defendant is a member of The Florida Bar.
   d. Member of Bar
      Within 10 days of the entry of a determination or judgment of guilt for any criminal offense entered on or after August 1, 2006, against

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him/her, the member of the bar must provide a copy of the document(s) entering the determination or judgment to the bar’s executive director.

4. Suspension
   Upon receiving notice that a bar member has been determined to be or adjudicated guilty of a felony, the bar will file a “Notice of Determination or Judgement of Guilt” or a consent judgment for disbarment or disciplinary revocation with the Supreme Court. The filing of the Notice and service on the respondent suspends him/her as a member of The Florida Bar. See Rule 3-7.2(f).

5. Appointment of Referee
   See Rule 3-7.2(h)
   a. Appointment
      A referee shall be appointed promptly by the Supreme Court upon the entry of an order of suspension.
   b. Petition to Modify or Terminate Suspension
      See Rule 3-7.2(g).
      ● Referee shall conduct a hearing on the petition within 7 days of appointment.
      ● Referee shall submit a report and recommendation to the Supreme Court within 7 days of the hearing.
      ● Burden is on respondent to establish he/she is not the convicted lawyer or the charge is not a felony; otherwise the suspension stands.
   c. Sanctions
      ● The referee may hear argument concerning the appropriate sanction contemporaneous with the petition to modify or terminate suspension. The report shall be in the same form as provided in Rule 3-7.2(m).
      ● The sanction hearing must be held, and a report and recommendation filed with the Supreme Court, within 90 days of the appointment of the referee.
         ○ Respondent may challenge sanctions only on grounds of mistaken identity or that the conduct does not constitute a felony.
         ○ Respondent may not contest findings of guilt in the criminal proceeding.
         ○ Respondent may present character evidence and explain the circumstances concerning the entry of a plea for purposes of mitigation.
H. Appointment of Referee – Non-Criminal

1. Appointment
   After a finding of probable cause and the filing of the formal complaint, the chief justice or his or her “delegated” chief judge of a judicial circuit will appoint a circuit or county judge as “referee.” The chief justice may also appoint a retired judge. See Rule 3-7.6(a)(1) and Appendix A.

2. Eligibility
   To be eligible for appointment as a referee, the judge must have previously served as a referee in a bar disciplinary proceeding prior to February 1, 2010, or must have received the referee materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed. See Rule 3-7.6(a)(2).

3. Timeline
   The delegated chief judge should appoint a county or circuit judge as referee within 14 days.

4. Letter of Appointment
   The circuit or county judge appointed as referee will receive a letter of appointment. See Appendix B.

I. Pre-Trial

1. Nature of Proceedings
   Quasi-judicial adversarial administrative proceeding, which is neither civil nor criminal. See Rule 3-7.6(b) and (f).

2. Participants
   a. Bar Counsel
      A bar employee or an appointed lawyer who is charged with investigating, preparing, and prosecuting with due diligence any case assigned. See Rule 3-2.1(a), Rule 3-7.6(g); see also Rule 3-3.3(b) and (d) (“[a] member of a grievance committee may represent the bar in any proceeding before a referee . . . if the case was not considered by the grievance committee on which the member serves”).
   b. Respondent
      A lawyer, usually a member of The Florida Bar, who is accused of misconduct or whose conduct is under investigation. See Rule 3-2.1(n).
   c. Complaining Witness
      Is not a party and shall have no rights other than those of any other witness. Unless impractical, the complaining witness may be granted the right to be present when the respondent is also present if he/she
has already testified in the case in chief. See Rule 3-2.1(c); Rule 3-7.6(k).

3. Pretrial Conference/Case Management: See Rule 3-7.6(c).
   a. Timing
      Shall be conducted by the referee within 60 days of appointment.
   b. Schedule
      The conference shall set a schedule for the proceedings that will include but not be limited to issues surrounding venue, discovery deadlines, and a final hearing date.
   c. Written Order
      The referee shall enter a written order.
   d. Copy of Order
      A copy of the written order shall be sent to the clerk of the Supreme Court. Original in record kept by referee.

4. Venue
   See Rule 3-7.6(d).
   ● The county where:
     ○ the offense occurred;
     ○ the respondent resides; or
     ○ the respondent practices law or last practiced law in Florida; or
   ● If the respondent is not a resident of Florida and if the offense did not occur in Florida, then as designated by the chief justice.
   ● The parties may stipulate to having the hearing held where the referee presides.

5. Rules of Procedure; Notice of Formal Complaint
   ● Florida Rules of Civil Procedure apply except where they conflict with the Rules Regulating The Florida Bar. See Rule 3-7.6(f)(1).
   ● The Florida Bar may serve notice of formal complaints by mailing certified papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar, unless otherwise ordered by the Supreme Court. See Rule 3-7.11(b).
   ● The Florida Bar may serve notice of formal complaints on every lawyer of another state, admitted pro hac vice, by mailing certified mail return receipt to the address of the Florida lawyer who was associated or appeared with the lawyer admitted pro hac vice.

6. Pleadings
   See Rule 3-7.6(h).
   a. Complaint

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See Rule 3-7.6(h)(1)

- Required:
  - Probable cause determined. See Rule 3-3.2(b)(1).
  - After an emergency suspension or probation. See Rules 3-5.2 and 3-3.2(b)(2).
  - After a felony determination or judgment of guilt. See Rule 3-3.2(b)(3).
  - After discipline in another jurisdiction. See Rule 3-3.2(b)(4).
  - After a felony charge with concurrence by chair of the grievance committee. See Rule 3-3.2(b)(5).
  - After a finding of judicial misconduct by the Supreme Court of Florida in an action brought by the Florida Judicial Qualifications Commission, when the respondent is no longer a judicial officer and the facts warrant disciplinary sanctions. See Rule 3-3.2(b)(6).

- Prepared by The Florida Bar counsel
- Filed with the Supreme Court of Florida
- Shall set forth the particular act(s) of conduct for which discipline is sought. See Rule 3-7.6(h)(1)(B).
- A formal complaint may join any number of charges against one or more respondents, but the referee may grant severance if justice requires. See Rule 3-7.6(h)(1)(C).

b. Answer and Motions

See Rule 3-7.6(h)(2).

- Required within 20 days of service of complaint. Mailbox rule applies.
- All defenses must be included in respondent’s answer except the following may be advanced by a separate motion:
  - challenges to sufficiency of complaint
  - challenges to jurisdiction
  - invocation of privilege, immunity, or disability.

- The respondent may be called as a witness by The Florida Bar to provide specific and complete disclosure of all matters material to the issue. NOTE: the courts have continually held that bar disciplinary proceedings are remedial, and are designed for the protection of the public and the integrity of the courts. To protect the public the bar is mandated to inquire into an attorney’s conduct when even the appearance of impropriety exists. For these reasons, the vast weight of judicial authority
recognizes Florida Bar proceedings are therefore “remedial,” not “penal,” and any invocation by the respondent of Fifth Amendment rights is generally improper. See Rule 3-7.6(j). DeBock v. State, 512 So. 2d 164 (Fla. 1987); The Florida Bar v. Massfeller, 170 So. 2d 834 (Fla. 1964).

- However, when a respondent has been charged with a crime and is suspended from the practice of law, the respondent may seek a waiver of the time limits set forth under the bar rules so the criminal matter can proceed before the disciplinary case. This is at the discretion of the referee or court and is sometimes permitted so the respondent’s constitutional rights in the criminal case (Fifth Amendment, limits on discovery) are not violated by having the disciplinary case proceed first. See Rule 3-7.2(k) (waiver of time limits). But see Rule 3-7.4(e).

c. Reply

See Rule 3-7.6(h)(3).

- May be filed within 10 days of service of the answer.
- Failure by the bar counsel to respond shall not be prejudicial, and all affirmative allegations shall be deemed denied by The Florida Bar.

d. Filing and Service of Pleadings

See Rule 3-7.6(h)(5).

- Prior to appointment of referee, pleadings shall be filed with the Supreme Court and shall bear a certificate of service showing parties on whom service was made.
- After appointment of referee, pleadings shall be filed with the referee and shall bear a certificate of service showing service on staff counsel, bar counsel, and all interested parties to the proceedings.

7. Discovery, Motions, and Hearings

See Rule 3-7.6(f)(2).

a. Discovery

See Rule 3-7.6(f)(2).

- Shall be available to the parties in accordance with the Florida Rules of Civil Procedure.
- Request for admissions: If a respondent fails to respond, admissions may be deemed admitted, and a finding of guilt may be based on the tacit admissions. *The Florida Bar v. Weil, 575*
b. Motions
   See Rule 3-7.6(h)(4).
   • Motion hearings may be deferred until final hearing.
   • Rulings on motions may be reserved until termination of the final hearing.

c. Subpoena
   See Rule 3-7.11(d)(1).
   • A subpoena for attendance of a witness or production of documents shall be issued only by the referee.
   • Service of process shall be as required by law or by an investigator employed by The Florida Bar.
   • Failure to comply, without adequate cause, may result in a finding of contempt of the Florida Supreme Court. See Rule 3-7.11(d)(7).

d. Notice of Final Hearing
   See Rule 3-7.6(i).
   • The cause shall be set for trial by either party or the referee upon not less than 10 days’ notice.
   • The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent’s answer, or when the answer was due.
   • Requests for extensions of time must be:
     o filed prior to expiration
     o filed with clerk of Supreme Court
     o inclusive of any party’s objections.
   • Referee may expedite a trial in the public interest and shorten timing of pleadings and notices. See Rule 3-7.6(h)(7).

e. Disqualification of Referee
   See Rule 3-7.6(h)(8).
   • Referee may be disqualified to the same extent that a trial judge may be disqualified.
   • Chief judge of circuit shall appoint successor referee from that same circuit.

J. TRIAL/FINAL HEARING
   1. Public Proceedings
      Matters that reach a referee are public information. NOTE: a referee may seal portions of the record, see Rule 3-7.1(d), and the procedures for

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maintaining confidentiality are set forth in Rule 3-7.1(m). However, sealing is frowned upon unless it is done for a truly legitimate reason, such as protecting the identity of a minor adopted child.

2. Termination of Proceedings
   a. Consent Judgment
      ● A respondent may enter into a plea of guilty after a formal complaint has been filed. Bar counsel, with approval of designated reviewer of the board of governors, will inform the respondent of disciplinary action sought. See Rule 3-7.9(e) (“Disbarment on Consent”).
      ● Referee may accept or reject the consent judgment.
      ● The sanction recommended in a consent judgment must be supported by case law and discussed in that consent judgment. The facts must be clearly presented for the Court’s ultimate review. Every count in the complaint must be accounted for in the consent judgment. Facts supporting the plea and recommended discipline must be clearly stated. See Court Comment to Rule 3-7.6.
   b. Board of Governors
      The board of governors may terminate disciplinary proceedings prior to receipt of evidence by a referee. See Rule 3-7.5(f).
   c. Summary Judgment
      May be granted as in ordinary civil hearing. The Florida Bar v. Gold, 937 So. 2d 652 (Fla. 2006).
   d. Disciplinary Revocation
      See Rule 3-5.1(g); see also Rule 3-7.12, Disciplinary Revocation of Admission to The Florida Bar.

3. Court Reporters
   Reporters are required to record all testimony. Transcripts are not required unless ordered by referee; or requested and paid for by a party. See Rule 3-7.6(n)(1).

4. Bifurcated Hearing
   It is permissible to have a noticed guilt hearing followed by a noticed sanction hearing. If a referee finds the respondent guilty of any single rule violation, a hearing must be held to determine appropriate discipline. The sanction hearing may be held immediately following the guilt hearing or at some other reasonable date. See The Florida Bar v. Baker, 810 So. 2d 876 (Fla. 2002).

5. Evidence
a. Grievance Committee Record
May be introduced to establish a prima facie case against the respondent. NOTE: If sufficient, the grievance record may sustain a charge. *The Florida Bar v. Schneiderman, 285 So. 2d 392 (Fla. 1973).*

b. Rules of Evidence
A referee is not bound by the technical rules of evidence. *The Florida Bar v. Tobkin, 944 So. 2d 219 (Fla. 2006); The Florida Bar v. Vining, 707 So. 2d 670 (Fla. 1998); The Florida Bar v. Rendina, 583 So. 2d 314 (Fla. 1991).*

c. Right of Confrontation
The right of confrontation is limited. *The Florida Bar v. Vannier, 498 So. 2d 896 (Fla. 1986).* Hearsay evidence is admissible. *The Florida Bar v. Centurion, 801 So. 2d 858 (Fla. 2000); The Florida Bar v. Weed, 559 So. 2d 1094 (Fla. 1990).*

d. Parol Evidence
Admissible only if necessary to resolve issues of excessive fees or costs. *See Rule 3-7.6(l).*

e. Exclusionary Rule
Does not apply. *The Florida Bar v. McClure, 575 So. 2d 176 (Fla. 1991); The Florida Bar v. Lancaster, 448 So. 2d 1019 (Fla. 1984).*

f. Character Evidence
Not permissible in the case in chief, guilt phase, but may be used for mitigation in the sanction hearing phase. *The Florida Bar v. Prior, 330 So. 2d 697 (Fla. 1976).*

g. Respondent
Respondent may be called as a witness to make specific and complete disclosure of matters material to the issues. Refusal to produce documents and/or testify may result in a finding of contempt. *See Rule 3-7.6(j).*

h. Complainant
Complainant may be called upon to testify and produce evidence.

6. Burden
a. On Florida Bar
The Florida Bar, through its bar counsel, has the burden. *The Florida Bar Bar v. Rood, 622 So. 2d 974(Fla. 1993).*

b. Standard
The Florida Bar must establish its charges by clear and convincing evidence. *The Florida Bar v. McCain, 361 So. 2d 700 (Fla. 1978); The Florida Bar v. Rayman, 238 So. 2d 594 (Fla. 1970).*
K. REPORT AND RECOMMENDATION

1. Completion Date:
   a. Generally
      Original appointment will mandate the entire process, including
      Report and Recommendation, shall be completed within 180 days (see
      Appendix A), except as provided by Rule 3-5.2(l).
   b. Extension
      The chief justice may extend this time upon motion by the referee.
      NOTE: all original motions for extension of time shall be filed with
      the clerk of the Supreme Court and include any objections.
   c. Filing
      Rule 3-7.6(m)(1) further provides that the Report and
      Recommendation shall be filed:
      - Within 30 days after the conclusion of the hearing (guilt and
        sanction hearings); or
      - Within 10 days after the referee has received the transcript of
        all hearings, whichever is later; or
      - Within such extended time period allowed by chief justice.

2. Prepared By
   - Referee
   - Bar counsel or respondent as directed by referee.
   - The referee should always make it clear that he/she used
     independent discretion in all aspects of his or her Report and
     Recommendation.

3. Sample Report
   See The Florida Bar Referee Manual (2019), pp. 17–21; as well as the
   Sample Referee Report at Appendix C.

4. Contents of Report
   a. Findings of Fact
      As to each item of charged misconduct. See Rule 3-7.6(m)(1)(A).
      - A referee’s findings of fact enjoy a presumption of
        correctness. The Florida Bar v. Vining, 707 So. 2d 670 (Fla.
        1998).
      - When reviewing a referee’s findings of facts, the Supreme
        Court will not reweigh the evidence and substitute its own
        judgment if the findings are supported by competent
        substantial evidence. The Florida Bar. v. Gwynn, 94 So. 3d
        425 (Fla. 2012).
      - It is the responsibility of the referee to resolve conflicts in
        evidence and credibility. The Florida Bar v. Germain, 957
b. Whether Respondent Should Be Found Guilty of Each Misconduct Charged
   See Rule 3-7.6(m)(1)(B).

c. Recommendations as to Disciplinary Measures to be Applied After:
   - Weighing all aggravators and mitigators. The referee’s findings as to aggravators and mitigators will carry a presumption of correctness and be upheld unless clearly erroneous or without support in the record. *The Florida Bar v. Niles*, 644 So. 2d 504 (Fla. 1994).
   - Reviewing relevant case law for similar case scenarios and previous disciplines found appropriate. An analysis of the facts in similar cases should be undertaken with a comparison to the pending case, as presentation of case law is crucial in the report. *The Florida Bar v. Lecznar*, 690 So. 2d 1284 (Fla. 1997).
   - Considering respondent may be ordered to attend and complete various Florida Bar courses on law office management and technology, professionalism, or anger management. They also may be ordered to consult with Florida Lawyers Assistance, Inc.
   - Familiarizing yourself with the types of discipline:
     - Diversion – while not really a sanction, diversion may be used to dispose of a case involving minor misconduct. See Rule 3-5.3(h).
     - Probation. See Rule 3-5.1(c).
     - Admonishment. See Rule 3-5.1(a) and (b); Rule 3-5.4.
     - Public reprimand. See Rule 3-5.1(d); Rule 3-5.4.
     - Suspension. See Rule 3-5.1(e); *The Florida Bar v. Altman*, __ So. 3d __, 2020 WL 2204857 (Fla. 2020) (referee recommended public reprimand followed by probation, but court ordered 3-year suspension; attorney knowingly failed to timely respond to bar inquiries, misrepresented information, and had extensive disciplinary history).
     - Disbarment. See Rule 3-5.1(f).
     - Disciplinary Revocation. See Rule 3-5.1(g).
     - Forfeiture of fees. See Rule 3-5.1(i).
o Restitution. See Rule 3-5.1(j).
Restitution is appropriate in cases involving excessive fees, illegal fees, conversion of client funds, or conversion of trust property. See Rule 3-5.1(j); The Florida Bar v. Feige, 937 So. 2d 605, 611 (Fla. 2006). Restitution is not used for other purposes. See The Florida 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); The Florida 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).

NOTE: The scope of review in imposing discipline is broader than that afforded the referee’s findings of fact, because ultimately it is the Supreme Court’s responsibility to order the appropriate sanction. Art. V, §15, Fla. Const. Discipline must be fair to the public and to the respondent and “must be severe enough to deter others who might be prone or tempted to become involved in like violations.” The Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983). The Supreme Court has acknowledged it has “moved toward imposing stronger sanctions for unethical and unprofessional conduct.” The Florida Bar v. Marcellus, 249 So. 3d 538, 545 (Fla. 2018); The Florida Bar v. Rosenberg, 169 So. 3d 1155, 1162 (Fla. 2015).

o Disciplinary revocation. See Rule 3-5.1(g).
Disciplinary revocation, added in 2012, is tantamount to disbarment. The referee will not recommend it in the report as it is a matter directly between the lawyer who requests it and the Supreme Court.

d. Statement of Past Disciplinary Measures
Statement of any past disciplinary measures with reference to the respondent that are on record. See Rule 3-7.6(m)(1)(D).
e. Costs
A statement of costs incurred and recommendations as to the manner in which such costs should be taxed. See Rule 3-7.6(m)(1)(E).
  ● Taxable costs are not considered discipline and are awarded at the discretion of the referee following receipt of a timely filed
motion to assess costs which must include a statement of costs incurred in the proceeding as set forth above. See Rule 3-7.6(q).

- Cost may be awarded in favor of the successful party. See Rule 3-7.6(q)(2)–(q)(4).
- A party shall file a statement of costs incurred and request for payment within 15 days after written notice by the referee that the report of the referee has been completed or at the time the guilty plea for consent judgment is filed. Any objections shall be filed within 10 days.

f. Certificate of Service
   Or cc, certifying the Report and Recommendation has been sent to parties (directly to the respondent if unrepresented) and bar counsel. The bar counsel will make the record available to other parties. See Rule 3-7.6(m)(2).

5. Hints to Avoid Common Report Problems/Shortcomings
   - It is important for the report of the referee to state which witness(es) the referee found credible or not credible.
   - It is crucial to present facts that show the misconduct.
   - The facts showing misconduct must be linked to the rules that the respondent violated or did not violate.
   - State the charged misconduct.
   - Make a clear ruling as to each charge.
   - Clearly state which charged misconduct is supported by the facts.
   - State the recommended discipline for each charge supported by the facts.

6. Record
   a. Prepared by Referee with Assistance of Bar Counsel
      The referee shall certify that the record is complete. See Rule 3-7.6(n)(3).
   b. Shall Include
      - Final Index. See Appendix D.
      - All items properly filed in the cause.
      - Pleadings.
      - Recorded testimony, if transcribed.
      - All exhibits received as evidence.
      - Correspondence (including emails).
      - Report and Recommendation of Referee, voluntary dismissal, or consent judgment.
      - Tabs and dividers corresponding to final index.
      - Notice of Certification of Record. See Appendix E.
7. Filing
   ● Referee shall give written notice to parties when the report of the referee is completed. See Rule 3-7.6(q)(5).
   ● The referee shall serve a copy of the index of the record and report and recommendation on respondent and The Florida Bar. See Rule 3-7.6(n)(3).
   ● The report and recommendation shall not be filed with the Supreme Court until the time for filing a motion to assess costs has expired and no motion has been filed, or, if a motion has been filed it has been considered and a ruling entered. See Rule 3-7.6(m)(2).
   ● The complete, well-organized, properly indexed and certified record shall be mailed to the Supreme Court of Florida via the Supreme Court Clerk of Court.
   ● The same day the original record is mailed to the Florida Supreme Court, the referee shall e-file the Report and Recommendation with the Florida Supreme Court at e-file@flcourts.org.
     o The Report and Recommendation shall be as a Word format attachment (obtained from bar counsel).
     o The referee’s electronic signature shall be affixed to the Report and Recommendation using “/s/” format.
     o The Supreme Court case number shall be on the subject line.

8. Report Filing and Format
    Shall be prepared in Times New Roman 14-point or Courier New 12-point font. See Florida Rule of Appellate Procedure 9.210(a)(2).

9. Resources
    See Appendix F.
Appendix A: Designation of Chief Judge to Appoint Referee

Supreme Court of Florida

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

The Florida Bar vs. ____________,
Supreme Court Case No. SC______

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

Except in cases where the ninety (90) day time limit provided by rule 3-5.2(l) applies, the referee’s report shall be filed within 180 days of his or her appointment, unless there are substantial reasons requiring delay.
DONE AND ORDERED at Tallahassee, Florida, on __________________.

________________________________
CHIEF JUSTICE
SUPREME COURT OF FLORIDA

ATTEST:

____________________________
JOHN TOMASINO
CLERK, SUPREME COURT

Enclosed: Complaint

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

NOTE: 90-DAY RULE APPLIES
Appendix B: Sample Letter of Appointment of Referee

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

ROBERT B. BENNETT
CHIEF JUDGE

February 27, 2006

Honorable Diana Moreland
Post Office Box 48927
Sarasota, Florida 34230

RE: The Florida Bar v.
SC06-

Dear Judge Moreland:

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

Sincerely,

[Signature]

Robert B. Bennett, Jr.
Chief Judge

APPENDIX B
Appendix C: Sample Report of Referee

THE FLORIDA BAR
Complainant,

v.

(ATTORENY NAME)
Respondent.

________________________________________

REPORT OF THE REFEREE

I. SUMMARY OF PROCEEDINGS:

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

   A. Jurisdictional Statement: Respondent is, and at all times mentioned
during this Investigation was, a member of The Florida Bar subject to
the jurisdiction and Disciplinary Rules of the Supreme Court.

   B. Narrative Summary of First Case (case number)

   C. Narrative Summary of Second Case

III. RECOMMENDATION AS TO GUILT

   A. Violation: First Case (First Case Number)

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

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

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

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

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

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

IV. **RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED**

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

A. Probation, see 3-5.1(c); Admonishment, see 3-5.1(a) and (b); Public Reprimand, see 3-5.1(d); Suspension, see 3-5.1(e); Disbarment, see 3-5.1(f); Forfeiture of Fees, see 3-5.1(i); and/or Restitution, see 3-5.1(j)

B. Costs. See 3-7.6(q). NOTE if costs are by consent of Respondent, or attach Bar Affidavit

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

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

A. **Personal History of Respondent:**

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

1. The duties violated by Respondent to clients. (*See Florida’s Standards for Imposing Lawyer Sanctions with Commentary, Section 4.0, pp. 18–31*)
2. The duties violated by Respondent to the public. (*See Florida’s Standards for Imposing Lawyer Sanctions; Section 5.0, pp. 31–34*)
3. The duties violated by the Respondent to the legal system. (*See Florida’s Standards for Imposing Lawyer Sanctions with Commentary, Section 6.0, pp. 34–39*)
4. The duties violated by the Respondent as a professional. (*See Florida’s Standards for Imposing Lawyer Sanctions with Commentary, Section 7.0, pp. 39–41*)

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

D. The existence of aggravating or mitigating circumstances (*See Florida’s Standards for Imposing Lawyer Sanctions with Commentary, Sections 9.0, 11.0, 12.0, and 13.18, pp. 43–49, 61–62*):

1. **Aggravators:** The Court finds the following reference aggravating factors:
   a. Prior disciplinary offenses;
   b. Dishonest or selfish motive;
   c. Pattern of misconduct;
   d. Multiple offenses;
   e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
   f. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
   g. Refusal to acknowledge wrongful nature of misconduct;
   h. Vulnerability of victim;
   i. Substantial experience in the practice of law;
   j. Indifference to making restitution;
   k. Obstruction of fee arbitration award by refusing or intentionally failing to comply with final award;
   l. Any other factors that may justify an increase in the degree of discipline to be imposed.
2. **Mitigation**: The Court finds the following as to mitigating factors:
   a. Absence of prior disciplinary record;
   b. Absence of dishonest or selfish motive;
   c. Personal or emotional problems;
   d. Timely good faith effort to make restitution or to rectify consequences of misconduct;
   e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
   f. Inexperience in the practice of law;
   g. Character or reputation;
   h. Physical or mental disability or impairment;
   i. Unreasonable delay in disciplinary proceeding provided that the respondent did not substantially contribute to the delay and provided further that the Respondent has demonstrated specific prejudice resulting from delay;
   j. Interim rehabilitation;
   k. Imposition of other penalties or sanctions;
   l. Remorse;
   m. Remoteness of prior offense(s);
   n. Prompt compliance with a fee arbitration award;
   o. Any other factors that may justify a reduction in the degree of discipline to be imposed.

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

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

A. **Grievance Committee Level**

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

B. Referee Level

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

Subtotal: 

Total: $ 

C. Manner of Payment:

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

Dated this _____ day of _______________, 20__.

_________________________
(NAME OF REFEREE)

CERTIFICATE OF SERVICE

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

_________________________
(NAME OF REFEREE)
Referee
Appendix D: Sample Index of Record

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

v.

(ATTORENY NAME)
Respondent.

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

INDEX OF RECORD

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Appendix E: Sample Notice of Certification of the Record

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

v.

(ATTORENY NAME)
Respondent.

________________________/

NOTICE OF CERTIFICATION OF THE RECORD

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

Submitted this _____ day of __________, 20__.

_________________________
(NAME OF REFEREE)
Referee

Copies to:
____________________, Respondent
____________________, Bar Counsel
____________________, Staff Counsel
Appendix F: Resources

**Florida State Courts Judiciary Education:**

Internet: [http://www.flcourts.org](http://www.flcourts.org)
Select: *Publications & Statistics/Judiciary Education/Bar Referee Information/Attorney Disciplinary Proceedings*

Results:
1. Notice about the Preparation and Filing of the Record
3. Contact Information and E-filing
8. Bar Referee Training Information

**Clerk of Florida Supreme Court: The Honorable John Tomasino**

500 South Duval Street
Tallahassee, Florida 32399-1927
Florida Bar Clerk: Barbara Harley-Price (850) 488-0125

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

e-file@flcourts.org
Appendix G: Referee Checklist

☐ 1. Review Supreme Court Order and Letter Appointing

☐ 2. Obtain the name and number of the current Bar Clerk with the Florida Supreme Court.

☐ 3. Review Complaint. Note:
   • Name of Bar Counsel: ______________________________
   • Name of Respondent: _______________________________
   • Name of Respondent’s Counsel: _______________________
   • Name of Complainant(s): ___________________________
   • Rule(s) and subsections allegedly violated: __________

☐ 4. Determine if ninety (90) day time limit or the 180 day time limit for filing report applies. See Rule 3-5.2(l) (date of appointment + 90 or 180=_______)
   • Calculated expiration date: ________

☐ 5. Establish office procedure for:
   • Safely keeping original pleadings, transcribed testimony, exhibits and reports, keeping records
   • Issuing subpoenas
   • Motions
   • Requesting extensions of time.
     o Assuring original motion, order and/or stipulation filed with Clerk of Supreme Court as well as, any objections in opposition
   • Ordering court reporter
   • Filing of documents by parties with your office
   • Filing of documents with the Supreme Court
   • Tracking referee costs, including travel expenses
   • Establish method for keeping up with Index

☐ 6. Schedule sixty (60) day pre-trial/case management conference. See Rule 3-7.6(c) _____________________________

☐ 7. Conduct sixty (60) day pre-trial /case management conference:
   Issues to discuss:
   • Location of final hearing/trial. See Rule 3-7.6(d)
   • Discovery deadlines
   • Motion deadlines
• Trial date
• Schedule date for receipt and marking of exhibits
• Method for conducting pretrial hearings (phone, in person)
• Method for marking exhibits received or not received
• Method for noting objections to testimony, physical evidence, etc.

☐ Prepare Order.
• If P.T.C./Case Management time extended by motion, order or stipulation must be forward to Clerk of Supreme Court with facts and objections noted.
• If P.T.C./Case Management conducted, forward copy of Order to Clerk of Supreme Court after Case Management.

☐ 8. Accommodations
• Contact Circuit where trial is to take place to make arrangements for a Courtroom, Bailiff, etc.
• Make hotel accommodations

☐ 9. Report and Recommendation/Voluntary Dismissal/Consent Judgment:
• Calculate due date (within 30 days of Final Hearing or 10 days of receipt of transcripts). See Rule 3-7.6(m)(1).
• Prepare Affidavit/Voucher for The Florida Bar concerning referee costs and travel expenses.
• Prepare Report and Recommendation or, if taken under advisement, you may obtain proposed reports by e-mail from Fla. Bar Counsel and Respondent which must contain:
  o Findings of Facts as to each charged violation
  o Recommendation as to Guilt or Not Guilty of as to each charged violation
  o Recommendation as to Sanction as to each violation found guilty
  o Statement of past disciplinary sanctions imposed
  o Statement of costs and recommendation for taxation
    NOTE if costs are by consent of Respondent, or attach Bar Affidavit
• 14-point Times New Roman type Make sure if matter ends with a Voluntary Dismissal or Consent Judgment that it contains:
  o Stipulations of Findings of Fact as to each violation charged
  o Recommendation as to Guilt or Not Guilty as to each violation charged
  o Recommendation as to Sanction as to each violation found guilty
  o Statement of costs and recommendation for taxation
    NOTE if costs are by consent of Respondent, or attach Bar Affidavit
o Include all effective disciplinary dates if different than Order date.

- Inventory and prepare chronological record for the Clerk of Supreme Court: See Rule 3-7.6(n)(2), include:
  o Prepare final Index
  o Pleadings
  o Recorded and Transcribed testimony
  o Exhibits received as evidence
  o Correspondence (include emails)
  o Report and Recommendation, Voluntary Dismissal or Consent Judgment
  o Tabs and dividers that correspond to Index number
  o Notice of Certification of Record

- Make sure the Report and Recommendation, Voluntary Dismissal, or Consent Judgment, as well as Final Index of Record, contains:
  o A Certificate of Service or a cc:
  o Is served on all parties including Respondent if not represented and The Florida Bar counsel.

- Mail entire record to Clerk of Supreme Court.

- E-file final Report and Recommendation of Referee to Clerk of Supreme Court
  o Must be done same date entire Record filed
  o Must be as a Word format attachment (obtained from Florida Bar Counsel)
  o Affix Referee’s electronic signature to Report and Recommendation using the “/s/” format
  o Email to: e-file@flcourts.org
  o Place Supreme Court case number on subject line