

3-7.5 | PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. Notice of grievance committee action recommending either diversion to a practice and professionalism enhancement program or finding no probable cause, no probable cause with a letter of advice, minor misconduct, or probable cause will be given to the designated reviewer for review. The designated reviewer may request grievance committee reconsideration or refer the matter to the disciplinary review committee of the board of governors within 30 days of notice of grievance committee action. The request for grievance committee reconsideration or referral to the disciplinary review committee must be in writing and must be submitted to bar counsel. For purposes of this subdivision letters, memoranda, handwritten notes, facsimile documents, and e-mail constitute communication "in writing."

(1) Requests for Grievance Committee Reconsideration. If the designated reviewer requests grievance committee reconsideration, bar counsel forwards the request to the chair of the grievance committee and gives notice to the respondent and complainant that the request has been made. If the grievance committee agrees to reconsider the matter, the rule prescribing procedures before a grievance committee applies.

(2) Referrals to Disciplinary Review Committee and Board of Governors. If the designated reviewer refers the matter to the disciplinary review committee, bar counsel prepares and submits a discipline agenda item for consideration by the committee. Bar counsel must give notice to respondent and complainant that the designated reviewer has made the referral for review.

(3) Nature of Disciplinary Review Committee and Board of Governors Review. The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any review on referral from a designated reviewer is consultation on pending litigation and is not subject to intervention by persons outside the relationship between the bar and its counsel.

(4) *Effect of Failure to Timely Make the Request for Reconsideration or Referral for Review.* If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the grievance committee action becomes final.

(5) *Authority of Designated Reviewer to Make Recommendations.* When the designated reviewer makes a request for reconsideration or referral for review, the designated reviewer may recommend:

(A) referral of the matter to the grievance mediation program;

(B) referral of the matter to the fee arbitration program;

(C) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(D) closure of the disciplinary file by the entry of a finding of no probable cause;

(E) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(F) a finding of minor misconduct; or

(G) a finding of probable cause that further disciplinary proceedings are warranted.

(b) Review of Grievance Committee Matters. The disciplinary review committee reviews those grievance committee matters referred to it by a designated reviewer and reports to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee is final unless overruled by the board. Recommendations of the disciplinary review committee may include:

(1) referral of the matter to the grievance mediation program;

(2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(c) Board Action on Review of Designated Reviewer Recommendations. On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part. Action by the board may include:

(1) referral of the matter to the grievance mediation program;

(2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(d) Notice of Board Action. Bar counsel must give notice of board action to the respondent, complainant, and grievance committee.

(e) Finding of No Probable Cause. A finding of no probable cause by the board 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.



(f) Control of Proceedings. Bar counsel, however appointed, is subject to the direction of the board at all times. The board, in the exercise of its discretion as the governing body of The Florida Bar, has the power to terminate disciplinary proceedings before a referee prior to the receipt of evidence by the referee, whether these proceedings have been instituted on a finding of probable cause by the board or a grievance committee.

(g) Filing Service on Board of Governors. All matters to be filed with or served on the board must be addressed to the board of governors and filed with the executive director.

(h) Custodian of Bar Records. The executive director or his designees are the custodians of the official records of The Florida Bar.

(Former Rule 3-7.4 renumbered as Rule 3-7.5 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, amended, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); May 20, 2004 - amended (SC03-705); corrected opinion issued July 7, 2004; (875 So.2d 448; December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); amended July 7, 2011, effective October 1, 2011 (SC10-1968), amended November 9, 2017, effective February 1, 2018 (234 So. 3d 577).)

