

3-7.17 | VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a) Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process, including the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies.

(b) Authority of the Court. The Supreme Court of Florida has the sole authority to enter an order under the provisions of this rule.

(c) Procedure.

(1) *Commencement.* Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct.

(2) *Order to Show Cause.* The court, acting on its own motion, or on the recommendation of the referee or petition of the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order will be served on the referee, if one has been appointed, the respondent, and The Florida Bar.

(3) *Response to Order to Show Cause.* The individual alleged to have engaged in vexatious conduct has 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, is deemed a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response must be served on a referee, if one has been appointed, the respondent, and The Florida Bar.

(4) *Reply.* The referee, if one has been appointed, the respondent, and The Florida Bar have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided without good cause prohibits a reply.

(5) *Referral to Referee.* The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under this subdivision will be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules.

(d) Court Order.

(1) *Rejection of Communications.* An order issued under this rule may contain provisions permitting the clerk of the Supreme Court of Florida, referee, The Florida Bar, and/or any other individual(s) or entity(ies) specified in the order to reject or block vexatious communications as specifically designated in the order. The order may authorize the individual(s), entity(ies), or group(s) specified in the order to block telephone calls made or electronic mail sent by an individual subject to an order issued under the authority of this rule.

(2) *Denial of Physical Access.* The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations.



(3) *Prohibition of or Limitation on Filings.* The order of the court may include a requirement that an individual subject to an order issued under the authority of this rule may be prohibited from submitting any future filings unless they are submitted solely by a member of The Florida Bar who is eligible to practice law or another person authorized to appear in the proceedings. If a person who is subject to an order issued under this rule is a member of The Florida Bar, that member may be prohibited from co-signing and submitting future filings.

(e) Violation of Order. Violation of an order issued under this rule will be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar.

(New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (234 So.3d 632).)

Comments

This rule is enacted to address circumstances involving repetitive conduct of the type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system, which must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, “every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution’s limited resources. A part of the court’s responsibility is to see that these resources are allocated in a way that promotes the interests of justice.” In *re McDonald*, 489 U.S. 180, 184 (1989).

This concept has also been recognized in bar disciplinary proceedings by the Supreme Court of Florida when the court stated: “Kandekore’s actions create a drain on the Court’s limited time, for with each filing the Court has, as it must, reviewed and considered repetitious and meritless arguments. Therefore, we conclude that a limitation on Kandekore’s ability to file repeated challenges to his long-final sanctions would further the constitutional right of access because it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others.” *The Florida Bar re Kandekore*, 932 So. 2d 1005, 1006 (Fla. 2006). Kandekore engaged in vexatious conduct after the court entered an order of disbarment.

The Supreme Court of Florida has also limited the ability of a lawyer to file further pleadings while that lawyer’s disciplinary case(s) were in active litigation. *The Florida Bar v. Thompson*, 979 So. 2d 917 (Fla. 2008).

