



RULES REGULATING THE FLORIDA BAR SUBCHAPTER 3-5: TYPES OF DISCIPLINE

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RULES REGULATING THE FLORIDA BAR

CHAPTER: 3 RULES OF DISCIPLINE

SECTION: 5 TYPES OF DISCIPLINE

RULES: 3-5.1 through 3-5.4



3-5.1 | TYPES OF DISCIPLINE - GENERALLY

A judgment entered, finding a member of The Florida Bar guilty of misconduct, will include 1 or more of the following disciplinary measures:

(a) Admonishments. A Supreme Court of Florida order finding minor misconduct and adjudging an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, on review of the report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment will be made a part of the record of the proceeding after the admonishment is administered.

(b) Minor Misconduct. Minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction.

(1) Criteria. In the absence of unusual circumstances misconduct will not be regarded as minor if any of the following conditions exist:

(A) the misconduct involves misappropriation of a client's funds or property;

(B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;

(C) the respondent has been publicly disciplined in the past 3 years;

(D) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;

(E) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or

(F) the misconduct constitutes the commission of a felony under applicable law.



(2) *Discretion of Grievance Committee.* A grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present, despite the presence of 1 or more of the criteria described in subpart (1) of this rule. When the grievance committee recommends an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program under these circumstances, its report will contain a detailed explanation of the circumstances giving rise to the committee's recommendation.

(3) *Recommendation of Minor Misconduct.* If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of \$1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the disciplinary review committee by the designated reviewer [as provided in rule 3-7.5(b)], the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within 15 days after service of the report. If rejected by the respondent, the report will be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct will be given, in writing, to the complainant.

(4) *Rejection of Minor Misconduct Reports.* The rejection by the board of governors of a grievance committee report of minor misconduct, without dismissal of the case, or remand to the grievance committee, is deemed a finding of probable cause. The rejection of a report by a respondent is deemed a finding of probable cause for

minor misconduct. At trial before a referee following rejection by a respondent of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct.* A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 15 days after a finding of probable cause by a grievance committee. An admission of minor misconduct may be conditioned on acceptance by the grievance committee, but the respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance committee may consider the admission without further evidentiary hearing and may either reject the admission, affirming its prior action, or accept the admission and issue its report of minor misconduct. If a respondent's admission is accepted by the grievance committee, the respondent may not later reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, the admission may not be considered or used against the respondent in subsequent proceedings.

(c) Probation. The respondent may be placed on probation for a stated period of time of not less than 6 months nor more than 5 years or for an indefinite period determined by conditions stated in the order. The judgment will state the conditions of the probation, which may include but are not limited to the following:

- (1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;
- (2) supervision of all or part of the respondent's work by a member of The Florida Bar;
- (3) required reporting to a designated agency;

(4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;

(5) supervision over fees and trust accounts as the court directs; or

(6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. The respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar, on failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

(d) Public Reprimand. A public reprimand will be administered in the manner prescribed in the judgment but all reprimands will be reported in the Southern Reporter. Due notice will be given to the respondent of any proceeding set to administer the reprimand. The respondent must appear personally before the Supreme Court of Florida, the board of governors, any judge designated to administer the reprimand, or the referee, if required, and this appearance will be made a part of the record of the proceeding.

(e) Suspension. The respondent may be suspended from the practice of law for a period of time to be determined by the conditions imposed by the judgment or order or until further order of the court. During this suspension the respondent continues to be a member of The Florida Bar but without the privilege of practicing. A suspension of 90 days or less does not require proof of rehabilitation or passage of the Florida bar examination and the respondent will become eligible for all privileges of members of The Florida Bar on the expiration of the period of suspension. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the Florida bar examination and the

respondent will not become eligible for all privileges of members of The Florida Bar until the court enters an order reinstating the respondent to membership in The Florida Bar. No suspension will be ordered for a specific period of time more than 3 years.

An order or opinion imposing a suspension of 90 days or less will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the end of the term of the suspension and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

An order or opinion imposing a suspension of more than 90 days will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the date of the court's order of reinstatement and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

(f) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the bar. Permanent disbarment precludes readmission. A former member who has not been permanently disbarred may only be admitted again on full compliance with the rules and regulations governing admission to the bar. Except as otherwise provided in these rules, no application for readmission may be tendered within 5 years after the date of disbarment or a longer period ordered by the court in the disbarment order or at any time after that date until all court-ordered restitution and outstanding disciplinary costs have been paid.

Disbarment is the presumed sanction for lawyers found guilty of theft from a lawyer's trust account or special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or trustee. A respondent found guilty of theft will have the opportunity to offer competent, substantial evidence to rebut the presumption that disbarment is appropriate.

Unless waived or modified by the court on motion of the respondent, an order or opinion imposing disbarment will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion and will provide that the disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients.

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or such other period of time in excess of 5 years contained in said order.

(h) Notice to Clients. Unless the court orders otherwise, when the respondent is served with an order of disbarment, disbarment on consent, disciplinary revocation, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent must immediately furnish a copy of the order to:

- (1) all of the respondent's clients with matters pending in the respondent's practice;
- (2) all opposing counsel or co-counsel in the matters listed in (1), above;
- (3) all courts, tribunals, or adjudicative agencies before which the respondent is counsel of record; and

(4) all state, federal, or administrative bars of which respondent is a member.

Within 30 days after service of the order the respondent must furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

(i) Forfeiture of Fees. An order of the Supreme Court of Florida or a report of minor misconduct adjudicating a respondent guilty of entering into, charging, or collecting a fee prohibited by the Rules Regulating The Florida Bar may order the respondent to forfeit the fee or any part thereof. In the case of a clearly excessive fee, the excessive amount of the fee may be ordered returned to the client, and a fee otherwise prohibited by the Rules Regulating The Florida Bar may be ordered forfeited to The Florida Bar Clients' Security Fund and disbursed in accordance with its rules and regulations.

(j) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee or that the respondent has converted trust funds or property. The amount of restitution will be specifically set forth in the disciplinary order or agreement and will not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee will not exceed the amount of the fee, or in the case of conversion will not exceed the amount of the conversion established in disciplinary proceedings. The disciplinary order or agreement will also state to whom restitution must be made and the date by which it must be completed. Failure to comply with the order or agreement will cause the respondent to become a delinquent member and will not preclude further proceedings under these rules. The respondent must provide the bar with telephone numbers and current addresses of all individuals or entities to whom the respondent is ordered to pay restitution.

(Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451); Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206) (916 So.2d 655; March 22, 2007, effective June 1, 2007 (SC06-1840) (952 So.2d 1185); December 20, 2007, effective March 1, 2008 (978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412).)



3-5.2 | EMERGENCY SUSPENSION AND INTERIM PROBATION OR INTERIM PLACEMENT ON THE INACTIVE LIST FOR INCAPACITY NOT RELATED TO MISCONDUCT

(a) Petition for Emergency Suspension.

(1) *Great Public Harm.* On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if un rebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm, the Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis.

(2) *Discipline by Foreign Jurisdiction.* On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbaring a lawyer from the practice of law, the Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis. See subdivision (1) of rule 3-7.2.

A petition for emergency suspension will also constitute a formal complaint. The respondent will have 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for emergency suspension in which to file an answer and any affirmative defenses to the bar's petition.

(b) Petition for Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct.

The Supreme Court of Florida may issue an order placing a lawyer on interim probation, under the conditions provided in subdivision (c) of rule 3-5.1 or placing the lawyer on the inactive list for incapacity not related to misconduct as provided in rule 3-7.13. Such order may be issued upon petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if un rebutted, would establish clearly and convincingly that conditions or restrictions on a lawyer's privilege to practice law in Florida are necessary for protection of the public. This petition will also constitute the formal complaint. The respondent will have 20 days after

docketing by the Supreme Court of Florida of its order granting the bar's petition for interim probation in which to file an answer and any affirmative defenses to the bar's petition.

(c) Trust Accounts. Any order of emergency suspension or probation that restricts the attorney in maintaining a trust account will be served on the respondent and any bank or other financial institution maintaining an account against which the respondent may make withdrawals. The order will serve as an injunction to prevent the bank or financial institution from making further payment from the trust account or accounts on any obligation except in accordance with restrictions imposed by the court through subsequent orders issued by a court-appointed referee. Bar counsel will serve a copy of the Supreme Court of Florida's order freezing a lawyer's trust account via first class mail on the bank(s) in which the respondent's trust account is held.

(1) The court's order appointing a referee under this rule may authorize the referee to determine entitlement to funds in the frozen trust account. Any client or third party claiming to be entitled to funds in the frozen trust account must file a petition requesting release of frozen trust account funds with the referee appointed in the case, accompanied by proof of entitlement to the funds.

(2) Bar counsel and bar auditors will provide information to the appointed referee from bar audits and other existing information regarding persons claiming ownership of frozen trust account funds. The bar will notify persons known to bar staff in writing via regular first class mail of their possible interest in funds contained in the frozen trust account. The notices will include a copy of the form of a petition requesting release of frozen trust account funds, to be filed with the referee and instructions for completing the form. The bar will publish, in the local county or city newspaper published where the lawyer practiced before suspension, a notice informing the public that the lawyer's trust account has been frozen and those persons with claims on the funds should contact listed bar counsel within 30 days after publication whenever possible.

(A) If there are no responses to the notices mailed and published by the bar within 90 days from the date of the notice or if the amount in the frozen trust account is over \$100,000, a receiver may be appointed by the referee to determine the person rightfully entitled to the frozen trust funds. The receiver will be paid from the corpus of the trust funds unless the referee orders otherwise.

(B) In all other instances, a referee shall determine who is entitled to funds in the frozen trust account, unless the amount in the frozen trust account is \$5,000 or less and no persons with potential entitlement to frozen trust account funds respond to the bar's mailed or published notices within 90 days from the date of the notice. In such event, the funds will be unfrozen.

(d) Referee Review of Frozen Trust Account Petitions. The referee will determine when and how to pay the claim of any person entitled to funds in the frozen trust account after reviewing the bar's audit report, the lawyer's trust account records, the petitions filed or the receiver's recommendations. If the bar's audit report or other reliable evidence shows that funds have been stolen or misappropriated from the lawyer's trust account, then the referee may hold a hearing. Subchapter 3-7 will not apply to a referee hearing under this rule. No pleadings will be filed, only petitions requesting release of frozen trust account funds. The parties to this referee proceeding will be those persons filing a petition requesting release of frozen trust account funds. The bar will not be a party to the proceeding. The referee's order will be the final order in the matter unless one of the parties petitions for review of the referee's order to the Supreme Court of Florida. The sole issue before the referee will be determination of ownership of the frozen trust account funds. The referee will determine the percentage of monies missing from the respondent's trust account and the amounts owing to those petitioners requesting release of frozen trust account funds. A pro rata distribution is the method of distribution when there are insufficient funds in the account to pay all claims in full. The referee's decision is subject only to direct petition for review of the referee's final order by a party claiming an ownership interest in the frozen trust funds. The petition for review must be filed within 60



days of the referee's final order. The schedule for filing of briefs in the appellate process will be as set forth in subchapter 3-7 of these rules.

(e) Separate Funds in Frozen Trust Accounts. The referee will order return of any separate funds to their rightful owner(s) in full upon their filing a petition requesting release of frozen trust account funds with proof of entitlement to the funds. Separate funds are monies deposited into the respondent's trust account after the misappropriation, which are not affected by the misappropriation, and funds that have been placed into a separate segregated individual trust account under the individual client's tax identification number.

(f) New Cases and Existing Clients. Any order of emergency suspension issued under this rule will immediately preclude the attorney from accepting any new cases and unless otherwise ordered permit the attorney to continue to represent existing clients for only the first 30 days after issuance of an emergency order. Any fees paid to the suspended attorney during the 30-day period will be deposited in a trust account from which withdrawals may be made only in accordance with restrictions imposed by the court.

(g) Motions for Dissolution. The lawyer may move at any time for dissolution or amendment of an emergency order by motion filed with the Supreme Court of Florida, a copy of which will be served on bar counsel. The motion will not stay any other proceedings and applicable time limitations in the case and, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion, will immediately be assigned to a referee designated by the chief justice. The filing of the motion will not stay the operation of an order of emergency suspension or interim probation entered under this rule.

(h) Appointment of Referee. On entry of an order of suspension or interim probation, as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee. On determination that funds have been misappropriated from a lawyer's trust account as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee.

(i) Hearing on Petition to Terminate or Modify Suspension.

The referee will hear a motion to terminate or modify a suspension or interim probation imposed under this rule within 7 days of assignment and submit a report and recommendation to the Supreme Court of Florida within 7 days of the date of the hearing. The referee will recommend dissolution or amendment, whichever is appropriate, to the extent that bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations.

(j) Successive Motions Prohibited. Successive motions for dissolution will be summarily dismissed by the Supreme Court of Florida to the extent that they raise issues that were or with due diligence could have been raised in a prior motion.

(k) Review by the Supreme Court of Florida. On receipt of the referee's recommended order on the motion for dissolution or amendment, the Supreme Court of Florida will review and act upon the referee's findings and recommendations regarding emergency suspensions and interim probations. This subdivision does not apply to a referee's final order to determine ownership of funds in frozen trust accounts. These final orders of referee are reviewable by the Supreme Court of Florida only if a party timely files a petition for review pursuant to this rule. Briefing schedules following the petition for review will be as set forth in subchapter 3-7 of these rules.

(l) Hearings on Issues Raised in Petitions for Emergency Suspension or Interim Probation and Sanctions. Once the Supreme Court of Florida has granted a petition for emergency suspension or interim probation as set forth in this rule, the referee appointed by the court will hear the matter in the same manner as provided in rule 3-7.6, except that the referee will hear the matter after the lawyer charged has answered the charges in the petition for emergency suspension or interim probation or when the time has expired for filing an answer. The referee will issue a final report and recommendation within 90 days of appointment. If the time limit specified in this subdivision is not met, that portion of an emergency order imposing a suspension or interim probation will be automatically dissolved, except upon order of the Supreme Court of Florida, provided that any other

appropriate disciplinary action on the underlying conduct still may be taken.

(m) Proceedings in the Supreme Court of Florida. Consideration of the referee's report and recommendation regarding emergency suspension and interim probation will be expedited in the Supreme Court of Florida. If oral argument is granted, the chief justice will schedule oral argument as soon as practicable.

(n) Waiver of Time Limits. The respondent may at any time waive the time requirements set forth in this rule by written request made to and approved by the referee assigned to hear the matter.

(Former Rule 3-5.1(g) redesignated as new Rule 3-5.2 and amended Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); amended June 29, 2006, effective August 1, 2006 (SC05-1684) (933 So.2d 498). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412).)



3-5.3 | DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS

(a) Authority of Board. The board of governors is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction.

(b) Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would 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.

(c) Limitation on Diversion. A respondent who has been the subject of a prior diversion is not eligible for diversion for the same type of rule violation for a period of 5 years after the earlier diversion. However, a respondent who has been the subject of a prior diversion and then is alleged to have violated a completely different type of rule at least 1 year after the initial diversion, will be eligible for a practice and professionalism enhancement program.

(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar shall not offer a respondent the opportunity to divert a disciplinary case that is pending at staff or grievance committee level investigations to a practice and professionalism enhancement program unless staff counsel, the grievance committee chair, and the designated reviewer concur.

(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent shall be diverted, shall state the general purpose for the diversion, and the costs thereof to be paid by the respondent.

(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall be served on the respondent who may accept or reject a diversion recommendation in the same manner as provided for review of recommendations of minor misconduct. The respondent shall not

have the right to reject any specific requirement of a practice and professionalism enhancement program.

(g) Effect of Rejection of Recommendation by Respondent. In the event that a respondent rejects a diversion recommendation the matter shall be returned for further proceedings under these rules.

(h) Diversion at Trial Level.

(1) Agreement of the Parties. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional pleas provided elsewhere in these rules shall apply to diversion at the trial level.

(2) After Submission of Evidence. A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program 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.

(3) Costs of Practice and Professionalism Enhancement Program. A referee's recommendation of diversion to a practice and professionalism enhancement program shall state the costs thereof to be paid by the respondent.

(4) Appeal of Diversion Recommendation. The respondent and the bar shall have the right to appeal a referee's recommendation of diversion, except in the case of diversion agreed to under subdivision (h) (1).

(5) Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program. Nothing in this rule shall preclude a referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

(i) Effect of Diversion. When the recommendation of diversion becomes final, the respondent shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Upon respondent's entry into a practice and professionalism enhancement program, the bar shall terminate its investigation into the matter and its disciplinary files shall be closed indicating the diversion. Diversion into the practice and professionalism enhancement program shall not constitute a disciplinary sanction.

(j) Effect of Completion of the Practice and Professionalism Enhancement Program. If a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, the bar's file shall remain closed.

(k) Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, including the payment of costs thereof, the bar may reopen its disciplinary file and conduct further proceedings under these rules. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

(l) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar shall annually determine the costs of practice and professionalism enhancement programs and publish the amount of the costs thereof that shall be assessed against and paid by a respondent.

(Added Oct. 20, 1994 (644 So.2d 282). Amended April 25, 2002 (820 So.2d 210); May 20, 2004, (SC03-705) (875 So.2d 448). Amended June 11, 2015, effective October 1, 2015 (167 So.3d 412).)

Comments

As to subdivision (c) of 3-5.3, a lawyer who agreed to attend the Advertising Workshop in 1 year would not be eligible for another such diversion for an advertising violation for a period of 5 years following the first diversion. However, that same lawyer would be eligible to attend the Advertising Workshop 1 year and a Trust Account Workshop for a completely different violation 1 year after the first diversion is completed.



3-5.4 | PUBLICATION OF DISCIPLINE

(a) Nature of Sanctions. All disciplinary sanctions, as defined in rules 3-5.1 and 3-5.2, or their predecessors, of these Rules Regulating The Florida Bar in disciplinary cases opened after March 16, 1990 are public information. Admonishments for minor misconduct entered in disciplinary cases opened on or before March 16, 1990 are confidential.

(b) Disclosure on Inquiry. All public disciplinary sanctions will be disclosed on inquiry.

(c) Manner of Publication. Unless otherwise directed by the court, and subject to the exceptions set forth below, all public disciplinary sanctions may be published for public information in print or electronic media.

(d) Limited Exception for Admonishments Issued by the Supreme Court of Florida. All admonishments issued by the court containing the heading "Not to be Published" will not be published in the official court reporter and will not be published in The Florida Bar News.

"Not to be Published" does not have the same meaning as "confidential." The Florida Bar may post information regarding specific orders of admonishment on the bar's website. Further, The Florida Bar may provide information regarding an admonishment on inquiry.

(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

All disciplinary sanctions as defined in rules 3-5.1 and 3-5.2, or their predecessors, entered in cases opened on or after March 17, 1990 are public information. Therefore, an inquiry into the conduct of a member of the bar will result in a disclosure of all these sanctions.

The public policy of this state is to provide reasonable means of access to public information. In furtherance of this policy, this rule is enacted so that all persons may understand what public information concerning lawyer disciplinary sanctions is available and in what format. This rule does not alter current court procedure or other requirements.



Admonishments are issued for minor misconduct and are the lowest form of disciplinary sanction. An admonishment is often issued for technical rule violations or for rule violations that did not result in harm. The court's orders imposing admonishments contain the heading "Not to be Published" and this rule directs that those admonishments not be published in Southern Reporter and directs The Florida Bar not to publish those admonishments in its newspaper, The Florida Bar News. The court does so in order to maintain a tangible difference between the sanctions of admonishment and public reprimand.

This rule does not bar disclosure of admonishments in response to an inquiry, whether written, oral, or electronic, and does not bar publication of admonishments on any website of The Florida Bar.

APPENDIX



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