

Supreme Court of Florida

No. SC21-653

IN RE: AMENDMENT TO RULES REGULATING THE FLORIDA BAR—RULE 3-7.18.

October 21, 2021

PER CURIAM.

Before the Court is the petition of The Florida Bar (Bar) proposing amendments to the Rules Regulating the Florida Bar (Bar Rules). We have jurisdiction. *See* art. V, § 15, Fla. Const.

The Bar proposes the addition of new rule 3-7.18 (Disposition of Inquiries or Complaints Referred to the Bar by Members of the Judiciary). The new rule establishes a process by which the Board of Governors of The Florida Bar and the Court will review and approve the disposition of referrals regarding lawyer misconduct from members of the judiciary that do not result in a finding of probable cause or the filing of a formal complaint if a finding of probable cause is not required.

The new rule is the product of the Special Committee on Examination of Judicial Referral Process, which was tasked with determining the most effective and efficient process to address judicial referrals of lawyer misconduct. Both the Special Committee and the Board of Governors approved the new rule, and consistent with Bar Rule 1-12.1(g), the Bar published formal notice of its proposal in *The Florida Bar News*. The notice directed interested persons to file their comments directly with the Court. No comments were received.

Having considered the Bar's petition, we adopt new rule 3-7.18 with the following modifications. We decline to adopt subdivisions (d)(2)(A) (Time Period for Review) and (d)(2)(B)(v), and renumber or reletter the other provisions within subdivision (d) accordingly. The two subdivisions, respectively, would have required the Court to act on the Board of Governors' recommendation and summary report within thirty days of its submission, and would have authorized the Court to successively extend the thirty-day period for an additional thirty days as needed. The Bar does not identify a specific need for these restraints.

Accordingly, the Rules Regulating the Florida Bar are amended as set forth in the appendix to this opinion. New language is indicated by underscoring. The amendments shall become effective December 20, 2021, at 12:01 a.m.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

Original Proceeding – Florida Rules Regulating the Florida Bar

Joshua E. Doyle, Executive Director, Michael G. Tanner, President, Gary S. Lesser, President-elect, Paige A. Greenlee and Michael Fox Orr, Co-Chairs, Special Committee on the Examination of the Process and Procedures for Judicial Referrals of Discipline Matters to The Florida Bar, and Elizabeth Clark Tarbert, Ethics Counsel, The Florida Bar, Tallahassee, Florida,

for Petitioner

Appendix

RULE 3-7.18 DISPOSITION OF INQUIRIES OR COMPLAINTS REFERRED TO THE BAR BY MEMBERS OF THE JUDICIARY

(a) Definitions. Wherever used in this rule, the following words or terms have the following meaning:

(1) *Disposition.* A disposition of an inquiry or complaint is the termination of an inquiry or complaint before a finding of probable cause or the filing of a formal complaint where a probable cause finding is not required. A disposition includes a:

(A) decision not to pursue an inquiry;

(B) dismissal of a disciplinary case;

(C) finding of no probable cause;

(D) finding of no probable cause with issuance of a letter of advice;

(E) recommendation of diversion; and

(F) recommendation of admonishment for minor misconduct.

(2) *Judicial Referral.* A judicial referral is an inquiry, communication, or complaint questioning the conduct of a member of the bar submitted to the bar by a member of the judiciary. A judicial referral also includes a court order, judgment, or opinion specifically referring to the bar a matter questioning the conduct of a member of the bar.

(b) Suspension of Deadlines for Final Disposition of Judicial Referrals. All deadlines for final disposition elsewhere in these rules are suspended under this rule. No disposition of a judicial referral will become final until the review required by this rule is complete.

(c) Review by Board of Governors. The disciplinary review committee will review all dispositions of judicial referrals first and

will recommend a disposition to the board. The board may accept or reject the recommended disposition. If the board rejects the recommended disposition, the board may:

(1) refer the matter to a grievance committee for additional investigation or review;

(2) find probable cause, and the case will proceed accordingly;
or

(3) recommend a different disposition to the Supreme Court of Florida.

The executive committee may act on behalf of the board or disciplinary review committee in connection with its review of dispositions of judicial referrals as specified with other disciplinary matters under these rules.

(d) Supreme Court of Florida Review. The Supreme Court of Florida may review the board's recommendation for approval of dispositions of judicial referrals.

(1) *Submission of Summary Report and Documents.* The bar will submit the board's recommendations for approval of judicial referrals to the clerk of the Supreme Court of Florida as soon as practicable after the board's decision but not later than 30 days. The submission will include a summary report of the inquiry or complaint; the nature of the alleged rule violations; the board's recommended disposition; the judicial referral; any response by the respondent; applicable orders, decisions, opinions, or communications by the judge or court; and all other non-confidential documents considered by the board.

(2) *Supreme Court of Florida Actions.* The Supreme Court of Florida may take the following actions:

(A) approve the board's recommended disposition;

(B) reject the board's recommendation, which will be deemed a finding of probable cause and direction to the bar to file a formal complaint;

(C) refer the matter back to the board for further review, with or without a recommendation or guidance; or

(D) request that the bar provide additional information.