

DISCIPLINE ROAD MAP

From initial complaint to Supreme Court order, an overview of the process followed in a typical case to impose sanctions on a Florida Bar member



Attorney Consumer Assistance Program (ACAP) receives complaints from clients, opposing counsel, judges or others.



If ACAP determines that allegations would constitute a violation of the Rules Regulating The Florida Bar, a file is opened and lawyer gets 15 days to respond.



Allegations would not constitute a violation warranting discipline or do not support going forward. Case is closed.



Bar counsel refers case to grievance committee in lawyer's judicial circuit (made up of at least one-third nonlawyers) for additional investigation. Committee assigns a member to investigate. After a hearing, committee determines whether there is probable cause.



Bar counsel closes the case after determining that discipline is not warranted.



If further investigation is warranted or lawyer does not respond, case is forwarded to one of the five branch offices of the Bar.



Grievance committee finds no probable cause, or issues a letter of advice or diversion. Case is closed.



A member of the Board of Governors, the designated reviewer, reviews grievance committee decision. BOG can review discipline cases at any point in the process.



If the grievance committee finds probable cause, charges are filed with Florida Supreme Court.



Florida Supreme Court appoints county or circuit judge to serve as referee. Referee hears witnesses, receives evidence and recommends guilt or innocence and appropriate sanctions. Referee also reviews all consent judgments.



Discipline order is enforced by the Supreme Court's contempt powers.



Reviews report of the referee or consent judgment. Court can approve or disapprove any aspect, and its decision on guilt and a final discipline order is final.



Referee's report is reviewed by designated reviewer and Bar's Board of Governors. BOG and lawyer have 60 days to appeal referee's decision.

ENTRANCE RAMP: ACAP

- Florida Bar's Attorney Consumer Assistance Program (ACAP) provides assistance through toll-free hotline (866-352-0707).
- ACAP opens more than 20,000 requests for assistance each year. Often, ACAP resolves attorney-client issues.
- Complaint: Clients, judges, opposing counsel and others may file complaints. The Bar also may learn of potential problems through media reports or other means.
- Intake counsel: Intake counsel conducts preliminary investigation. If intake counsel determines that allegations would not constitute a violation warranting discipline, case is closed without further action. If intake counsel determines that facts alleged would constitute a violation warranting discipline, counsel opens a file, notifies accused lawyer and requests a response within 15 days. After receiving response, intake counsel may close file.

PROCESS BEGINS: WHAT ACAP CAN AND CANNOT DO

- ACAP can suggest that a client first try to work things out with a lawyer.
- ACAP can ask a lawyer to provide client with an update on the status of a case.
- ACAP cannot provide lawyer referrals. Potential clients should call a local bar association or The Florida Bar's lawyer referral service.
- ACAP cannot recover money damages. Clients who have suffered a financial loss due to a lawyer's theft of funds should contact The Florida Bar Clients' Security Fund (800-342-8060, ext. 5812) to make a claim.
- The Florida Bar cannot intervene in fee disputes unless the fee is illegal, prohibited or clearly excessive. If a lawyer and client cannot agree on fees, they may agree to take the dispute to The Florida Bar's Grievance Mediation and Fee Arbitration Program, which is free.

BRANCH OFFICE

- If further investigation is warranted or if lawyer fails to respond, intake counsel forwards case to Bar's branch office covering the judicial circuit where the lawyer practices. The Florida Bar has branch offices in Tallahassee, Tampa, Orlando, Fort Lauderdale and Miami. About one-third of cases investigated at ACAP are transferred to branch offices for further investigation.
- At branch office, case is assigned to Bar counsel, who conducts further investigation.
- Bar counsel will close case if disciplinary measures are not warranted.
- For minor violations, Bar counsel can recommend diversionary measures such as ethics school. Diversion is not considered "discipline," which would stay on the lawyer's permanent record.
- If there are sufficient grounds to go forward, complaint is forwarded to a grievance committee in the accused lawyer's judicial circuit. At that point, The Florida Bar becomes the complainant/prosecutor.

GRIEVANCE COMMITTEE

- A grievance committee is made up of volunteers from the community, at least one-third of whom are not lawyers. Each of Florida's 20 judicial circuits has at least one grievance committee.
- If a Bar counsel determines that allegations warrant further proceedings, discipline case may be referred to a grievance committee.
- Grievance committee chair assigns case to committee member, who serves as the investigating member. After interviewing witnesses and reviewing evidence, investigating member makes recommendation to grievance committee.
- Like a grand jury, grievance committee decides whether there is probable cause to believe a lawyer violated the professional conduct rules and whether discipline is warranted.
- If grievance committee takes testimony from accused lawyer, the person who filed the original complaint may attend.
- Grievance committee investigations usually take three to six months. A grievance committee has several options:
 - o Find no probable cause, or no probable cause with a letter of advice, which ends the case with no discipline.
 - o Recommend mediation or arbitration of a fee dispute. Issue finding of minor misconduct, which includes an admonishment.
 - o Recommend diversion to a practice and professionalism enhancement program. Diversion is not considered "discipline," which would stay on lawyer's permanent record.
 - o Recommend deferral of grievance committee review until conclusion of a parallel criminal or civil case.
 - o Find probable cause.
- If grievance committee finds probable cause to believe that discipline is warranted, the Bar counsel will file formal complaint against lawyer with Supreme Court of Florida.
- Most lawyer discipline cases are settled without a trial. However, lawyer may contest the complaint. If that happens, case moves to trial phase.

DESIGNATED REVIEWER / BOG

- The Florida Bar's Board of Governors reviews grievance committee actions.
- Designated reviewer – a BOG member assigned to review a specific case through all stages -- can refer matters to BOG for review. Any BOG member also can request review and debate of a case.
- If review by BOG is requested, it first occurs in the Disciplinary Review Committee (DRC). DRC meets before each of the six BOG meetings each year to review disciplinary cases. DRC typically reviews 25 to 40 discipline cases each meeting.
- DRC makes recommendations to BOG, which votes as a whole on the DRC's recommendations.
- BOG options before trial:
 - o Review of grievance committee decisions: If designated reviewer disagrees with the grievance committee's findings, the designated reviewer can send the matter back for another review, or can request review by BOG. BOG can overturn a grievance committee's findings and enter a finding of probable cause, no probable cause or minor misconduct, or it can order diversion.
 - o Review of consent judgments and disciplinary revocations: After probable cause is found but before trial, Bar counsel and the accused lawyer can enter into a proposed consent judgment, with a guilty plea and proposed sanctions. BOG can accept or reject a consent judgment, or can condition its acceptance on additional conditions. Consent judgments approved by BOG are sent to the referee, and if approved by the referee, filed with the Supreme Court. If a consent judgment is not accepted by both BOG and the referee, then the case proceeds to trial.

CHARGES FILED

From the Rules Regulating The Florida Bar:

- 3-2.1(j) 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.
- 3-3.2 (b)(1) Finding of Probable Cause. A formal complaint may be filed if there has been a finding under these rules that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action ...
- 3-7.4(g)(3) Vote. All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members.

TRIAL BY REFEREE

- Based on findings of grievance committee, Bar counsel may file formal complaint against accused lawyer with Florida Supreme Court.
- If case is not disposed of pretrial via a consent judgement, Supreme Court appoints a circuit or county court judge as referee to hold a trial on the complaint.
- Referee takes testimony and receives other evidence.
- Referee issues report with findings and, if recommending guilt, also recommends sanctions. Referee's recommendations are not final until approved by Supreme Court.

REVIEW

- After the referee's report is filed with the Supreme Court, it is reviewed by the Board of Governors. The BOG and accused lawyer each have 60 days to appeal referee's decision.
- Referees' decisions following trial and pretrial dispositive orders (such as dismissal or summary judgment) are reviewed by the BOG. If BOG disagrees with any aspect of the referee's decision, it can seek review by the Supreme Court.
- Like grievance committee actions, the referee's report is first reviewed by the Disciplinary Review Committee before being presented to the BOG.

SUPREME COURT

- Florida Supreme Court is the final authority on lawyer discipline. Court's decision on guilt and the ultimate sanction imposed are final.
- Supreme Court reviews consent judgments and referee decisions from disciplinary trials. If neither The Florida Bar's Board of Governors nor the accused lawyer petitions for review of the referee's report, then the Court will conduct its review of the report without briefs unless the court requests briefing.
- Supreme Court can approve or disapprove any aspect of the report of referee, including findings of guilt or recommended sanctions.

ENFORCEMENT

- The Florida Supreme Court's orders are enforced through the Court's contempt powers. Ex: A lawyer accused of practicing law while suspended will be brought before the Court on a petition for contempt, and new discipline may be imposed. A disbarred lawyer who is caught practicing law may be permanently disbarred and face additional contempt sanctions.