



# The Florida Bar

# **REINSTATEMENT MANUAL**

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# REINSTATEMENT MANUAL

September 2018 Edition

## PREFACE

A copy of this manual will be available to each petitioner for reinstatement (or petitioner's counsel), each referee assigned to hear a reinstatement proceeding, and each bar counsel to act in a reinstatement proceeding. The manual is intended to acquaint all interested individuals with reinstatement rules and procedures of The Florida Bar. This manual is intended to be only a guide and a starting point for persons interested in determining the requirements of various reinstatement procedures. The Florida Bar makes no warranties about the content hereof. Suggestions for changes or additions to the manual are solicited.

(**CAVEAT:** Because the rules covering reinstatement are amended from time to time, readers of this manual are urged to consult the current Rules Regulating The Florida Bar before filing a petition for reinstatement.)

## **I. REINSTATEMENT FOLLOWING DISCIPLINE**

In general,

. . . reinstatement proceedings are governed by the rules in effect at the time of application for reinstatement, unless the original discipline opinion otherwise provides or unless the rules at the time of disbarment otherwise provide.

The Florida Bar re Kimball, 425 So. 2d 531, 533 (Fla. 1982) cited with approval in Florida Board of Bar Examiners ex rel. Higgins, 772 So. 2d 486 (Fla. 2000).

### **A. Authority and Governing Rules**

#### **Reinstatement**

These proceedings are commenced by the filing of a petition with the Supreme Court of Florida and involve the process of appointment of a referee and report to the court. The Rules Regulating The Florida Bar apply.

#### **Readmission**

These proceedings are commenced by the filing of an application for readmission with the Florida Board of Bar Examiners. The Rules Governing Admission to the Bar apply.

1. Disbarment, Disbarment on Consent or Disciplinary Revocation. Unless the rules of discipline in effect at the time of disbarment or the opinion finding disbarment provide otherwise, readmission, not reinstatement, following disbarment is pursuant to rule 3-7.10(n), Rules Regulating The Florida Bar. Rule 3-7.10(n), provides that a former member who has been disbarred "may be admitted again only upon full compliance with the rules and regulations governing admission to the bar." Thus, disbarred members must apply to the Florida Board of Bar Examiners for readmission and successfully pass the bar examination. A disciplinary resignation and disciplinary revocation are tantamount to disbarment. [Rule 3-5.1(g)]
2. Suspension. "A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again pursuant to this rule. The

proceedings under this rule are not applicable to any attorney who is not eligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.” Rule 3-7.10(a), Rules Regulating The Florida Bar.

3. Members who have been deemed delinquent for a period of 5 years or longer shall not be reinstated except upon application to and approval by The Florida Board of Bar Examiners, Rule 1-3.7(d).
4. The Reinstatement Petition shall not be referred to a referee for hearing absent a showing that all costs and restitution assessed against the Petitioner have been paid, Rule 3-7.10(d).

Lawyers who are disbarred, or who cannot practice due to disciplinary revocation must demonstrate that they have completed all elements of their rehabilitation before filing a petition for reinstatement. Rule 3-7.10(n)(2).

## **B. Form of Petition**

Petitions for reinstatement filed pursuant to rule 3-7.10 are filed with the Supreme Court of Florida in the form prescribed by rule 3-7.10(b) and (l) and must be accompanied by a written authorization to the District Director of the Internal Revenue Service allowing release of the petitioner's tax returns for the past 5 years or since admission to the bar, whichever is greater. A copy of all disciplinary judgments previously entered against petitioner should also be attached. A \$500 cost deposit must be paid to The Florida Bar in Tallahassee. A sample petition is included as Appendix C to this manual.

## **C. Procedure Once Petition is Filed**

Once the petition has been filed with a copy served on staff counsel at The Florida Bar in Tallahassee, a copy of the petition, along with proof of payment of a deposit in the amount of \$500 paid to The Florida Bar, a referee is appointed to conduct a hearing.

"The chief justice shall refer the petition for reinstatement to a referee for hearing; provided, however, that no such reference shall be made until evidence is submitted showing that all costs assessed against the petitioner in all prior disciplinary or incapacity proceedings have been paid and restitution has been made." Rule 3-7.10(d), Rules Regulating The Florida Bar.

Notice of the reinstatement is published and copies of the petition will be furnished to local board members, local grievance committees, local bar association presidents and other persons who may be particularly interested in the proceedings. Interested persons are asked to direct any comments about the petitioner to the appointed bar counsel.

The referee to whom the petition for reinstatement is referred shall conduct a hearing in the same manner as a disciplinary trial unless the Bar stipulates to the petition. Pleadings other than the petition are not required. The matter to be decided is the fitness of the attorney to resume the practice of law. Any persons to whom notice is given, any other interested persons or any local bar association may appear before the referee in support of or in opposition to the petition at the times fixed for hearings. The findings of the referee should relate to matters tending to show petitioner's rehabilitation and present fitness to resume the practice of law.

The burden of proof is on the petitioner who must establish entitlement to reinstatement. The Florida Bar re Cohen, 560 So. 2d 785 (Fla. 1990); The Florida Bar re Wolf, 21 So. 3d 15, 16 (Fla. 2009) (“A petitioner seeking reinstatement to The Florida Bar must establish by clear and convincing evidence that he has met the criteria set forth in Rule Regulating the Florida Bar 3-7.10, ‘Reinstatement and Readmission Procedures,’ and the decisions of this Court.”). The petitioner for reinstatement must sustain the burden of proving the fitness in terms of integrity as well as professional competency. The evidence presented must be clear and convincing. In determining the fitness of the petitioner to resume the privilege of practicing law, emphasis is placed upon the protection of the public and The Florida Bar. Petitioner must establish conduct to justify the restored confidence of the public generally, the restored confidence of petitioner's professional contemporaries and the restored confidence of the supreme court. In re Dawson, 131 So. 2d 472 (Fla. 1961). See also, The Florida Bar ex rel. McGraw, 903 So.2d 905 (Fla. 2005) quoting Dawson at 474 (“In the ultimate, we will look to the evidence in each case to ascertain whether it supports a conclusion that the errant lawyer has so conducted himself personally ... to justify a conclusion that he has repented of his misdoings, that the disciplinary order has impressed him with the vital importance of ethical conduct in the practice of law, and that he is morally equipped to resume a position of honor and trust among the ethical practitioners at the Bar. This is the pattern which an applicant for reinstatement must fit.”)

“Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society.” [Rule 3-7.10(f)(3)] The essential elements of proof for reinstatement

will vary with the particular case depending upon the nature of the offense but the following basic elements furnish a guide:

1. strict compliance with the disciplinary order;
2. evidence of unimpeachable character and moral standing in the community;
3. clear evidence of a good reputation for professional ability;
4. evidence of lack of malice and ill feeling by the petitioner toward those who by duty were compelled to bring about the disciplinary proceedings;
5. personal assurances, supported by corroborating evidence, revealing a sense of repentance as well as a desire and intention of the petitioner to engage in exemplary conduct in the future;
6. in cases involving misappropriation of funds, restitution; and
7. petitioner must present evidence of personal community conduct to justify a conclusion that:
  - (a) petitioner has repented of misdoings;
  - (b) the disciplinary order has impressed the petitioner with the vital importance of ethical conduct in the practice of law; and
  - (c) the petitioner is morally equipped to resume a position of honor and trust among the ethical practitioners at the bar. In re Dawson, 131 So. 2d 472 (Fla. 1961); In re Timson, 301 So. 2d 448 (Fla. 1974); The Florida Bar re Whitlock, 511 So.2d 524 (Fla. 1987); The Florida Bar re Grusmark, 662 So. 2d 1235 (Fla. 1995); The Florida Bar ex rel. Wolfe, 767 So. 2d 1174 (Fla. 2000).

If a petition has been ineligible to practice for a period of 3 years or longer due to a suspension, there must a demonstrated effort to remain current with changes and developments in the law by attending a minimum of 10 hours of CLE per year. Practical experience can also be considered. Petitioners ineligible for 5 years or longer must pass the Florida portions of the Florida Bar Examination and the MPRE.

#### **D. Investigation by Bar Counsel**

Once the petition for reinstatement has been served on The Florida Bar, bar counsel will be assigned and will file a Notice of Appearance. Bar counsel, when investigating a petitioner for reinstatement will, among other things, follow the following procedures:

furnish copies of the petition for reinstatement to local board members and board members where the original disciplinary case was processed if different from the reinstatement proceedings;

furnish copies of the petition to local grievance committees and the grievance committee that processed the original disciplinary case in the area where the misconduct occurred;

furnish copies of the petition to local bar association presidents;

contact and interview complainants in the original disciplinary case (through their counsel if appropriate);

assure that courts and former clients received notice from Petitioner regarding the suspension;

review Petitioner's community service performed during suspension; (The court recently amended Rule 3-7.10(f)(3)(G) to clarify that "Community or civic service is donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions" In Florida Board of Bar Examiners re M.L.B., 766 So.2d 994, 998-999 (Fla. 2000), the court stated "we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens." The court has denied reinstatement where the petitioner has provided no community service during the period of suspension. See, The Florida Bar v. Tauler, 837 So. 2d 413 (Fla. 2003); The Florida Bar v. Juan Baraque, 43 So. 3d 691 (Fla. 2010).

contact employers and ascertain compliance with Rule 3-6.1;

contact any persons involved with the petitioner in civil litigation;

in a criminal case, assure that civil rights are restored and interview Judge, prosecutor, victims and probation officers;

publish the notice of the proceedings in the area where the original case was processed and The Florida Bar News and local newspapers. This notice requests anyone who has a comment to come forward and advise the bar of such. The notice will recite the discipline imposed, a summary of facts leading thereto, and any terms of probation; and

ascertain that Petitioner's law practice was properly closed and that Petitioner did not practice law while suspended or obtain legal fees improperly.

Bar counsel may state on the record what efforts the bar took to investigate the petitioner's fitness and any reasons for opposing the petition, including the gravity of the misconduct which led to the suspension, or the short time duration between the suspension and the petition for reinstatement. Bar counsel may request that a staff investigator assist by conducting an investigation concerning the petitioner's activities since suspension.

At the conclusion of the hearing on petitioner's fitness to resume the practice of law, the referee will file with the Supreme Court of Florida a report that includes findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law. Either party may seek review of the referee's report. If the court finds the petitioner to be fit to resume the practice of law, the judgment shall reinstate petitioner to the practice of law in Florida. The judgment, however, may be conditioned upon the payment of costs, the payment of restitution to parties harmed by the petitioner's misconduct, or such other conditions as the court deems appropriate. See e.g., The Florida Bar re Kimball, 425 So.2d 531 (Fla. 1982).

No petition for reinstatement shall be considered if filed within one year following an adverse judgment on a previous petition for reinstatement.



## II. REINSTATEMENT FOLLOWING INCAPACITY

The Florida Bar has authority over the reinstatement of attorneys placed on the inactive list for incapacity not related to misconduct as provided in rule 3-7.13, Rules Regulating The Florida Bar, which states:

- (a) **Classification and Effect of Incapacity.** Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity, or other infirmity, the attorney may be classified as an inactive member and shall refrain from the practice of law even though no misconduct is alleged or proved.
- (b) **Applicable Rules of Procedure.** Proceeding under this rule shall be processed under the Rules of Discipline in the same manner as proceedings involving acts of misconduct, except that emergency or interim proceedings authorized under rule 3-5.2 shall be processed as stated in that rule.
- (c) **Reinstatement to Practice.** A member who has been classified as inactive under this rule may be reinstated in the same manner as in proceedings for reinstatement after suspension for acts of misconduct.
- (d) **Proceedings Upon Adjudication of Incapacity or Hospitalization Under the Florida Mental Health Act or Under the Authority of Applicable Law.** An attorney who has been adjudicated as incapacitated from the practice of law or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law may be classified as an inactive member and shall refrain from the practice of law. Upon receipt of notice that a member has been adjudicated incapacitated or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, The Florida Bar shall file notice thereof with the Supreme Court of Florida. Thereafter the court shall issue an order classifying the member as an inactive member.

If an order of restoration is entered by a court having jurisdiction or the attorney is discharged from hospitalization under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, the attorney may be reinstated in the same manner as in proceedings for reinstatement after suspension for acts of misconduct.

**(e) Proceedings Upon Consent to Incapacity.** An attorney may consent to incapacity not for misconduct in the same manner as provided in rule 3-7.9 of these Rules Regulating The Florida Bar.

### **III. SUMMARY PROCEDURES FOR UNCONTESTED REINSTATEMENT**

Rule 3-7.10(g)(4) allows for expedited uncontested reinstatement cases. It enables bar counsel to stipulate to reinstatement, but only after completing discovery and other due diligence to confirm that no evidence exists upon which denial of reinstatement may be based. Hence, bar counsel should not determine whether summary procedures are appropriate until after completing a thorough investigation. Bar counsel must also gain the approval of the designated reviewer and staff counsel, via a consent judgment memo that details the results of the investigation, before stipulating to the reinstatement, including conditions thereon. The stipulation and the bar's motion to assess costs and affidavit of costs shall be filed with the referee, Rule 3-7.6(q)(5). A proposed report of referee should also be provided to the referee.

## APPENDIX A

### RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

**(a) Reinstatement; Applicability.**

A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again pursuant to this rule. The proceedings under this rule are not applicable to any lawyer who is not eligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.

**(b) Petitions; Form and Contents.**

(1) *Filing.* The original petition for reinstatement and 1 copy must be in writing, verified by the petitioner, and addressed to and filed with the Supreme Court of Florida. A copy must be served on Staff Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323.

(2) *Form and Exhibits.* The petition must be in such form and shall be accompanied by such exhibits as provided for elsewhere in this rule. The information required concerning the petitioner may include any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and employment information; financial statements; and statement of restitution of funds that were the subject matter of disciplinary proceedings. In cases seeking reinstatement from incapacity, the petition must also include copies of all pleadings in the matter leading to placement on the inactive list and all such other matters as may be reasonably required to demonstrate the character and fitness of the petitioner to resume the practice of law.

**(c) Deposit for Cost.** The petition must be accompanied by proof of a deposit paid to The Florida Bar in such amount as the board of governors prescribes to ensure payment of reasonable costs of the proceedings, as provided elsewhere in this rule.

**(d) Reference of Petition For Hearing.** The chief justice will refer the petition for reinstatement to a referee for hearing; provided, however, that no such reference will be made until evidence is submitted showing that all costs assessed against the petitioner in all disciplinary or incapacity proceedings have been paid and restitution has been made.

(e) **Bar Counsel.** When a petition for reinstatement is filed, the board of governors or staff counsel, if authorized by the board of governors, may appoint bar counsel to represent The Florida Bar in the proceeding. The duties of such lawyers are to appear at the hearings and to prepare and present to the referee evidence that, in the opinion of the referee or such lawyer, should be considered in passing upon the petition.

(f) **Determination of Fitness by Referee Hearing.** The referee to whom the petition for reinstatement is referred must conduct the hearing as a trial, in the same manner, to the extent practical, as provided elsewhere in these rules. The matter to decide is the fitness of the petitioner to resume the practice of law. In determining the fitness of the petitioner to resume the practice of law, the referee will consider whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated, as further described in this subdivision. All conduct engaged in after the date of admission to The Florida Bar shall be relevant in proceedings under this rule.

(1) *Disqualifying Conduct.* A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of a petitioner may constitute a basis for denial of reinstatement. The following are considered as disqualifying conduct:

- (A) unlawful conduct;
- (B) academic misconduct;
- (C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;
- (D) misconduct in employment;
- (E) acts involving dishonesty, fraud, deceit, or misrepresentation;
- (F) abuse of legal process;
- (G) financial irresponsibility;
- (H) neglect of professional obligations;
- (I) violation of an order of a court;
- (J) evidence of mental or emotional instability;
- (K) evidence of drug or alcohol dependency;

- (L) denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (M) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (N) failure of a felony-suspended lawyer to submit proof that the affected lawyer's civil rights have been restored; and
- (O) any other conduct that reflects adversely upon the character or fitness of the applicant.

(2) *Determination of Character and Fitness.* In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- (A) age at the time of the conduct;
- (B) recency of the conduct;
- (C) reliability of the information concerning the conduct;
- (D) seriousness of the conduct;
- (E) factors underlying the conduct;
- (F) cumulative effect of the conduct or information;
- (G) evidence of rehabilitation;
- (H) positive social contributions since the conduct;
- (I) candor in the discipline and reinstatement processes; and
- (J) materiality of any omissions or misrepresentations.

(3) *Elements of Rehabilitation.* Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. Any petitioner for reinstatement from discipline for prior misconduct is required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

- (A) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (B) unimpeachable character and moral standing in the community;

- (C) good reputation for professional ability, where applicable;
- (D) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- (E) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- (F) restitution of funds or property, where applicable; and
- (G) positive action showing rehabilitation by such things as a person's community or civic service. Community or civic service is donated service or activity that is performed by someone or a group of people for the benefit of the public or its institutions.

The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for admission to the bar because service to one's community is an essential obligation of members of the bar.

(4) Educational Requirements.

- (A) In the case of a petitioner's ineligibility to practice for a period of 3 years or longer under this rule, the petitioner must demonstrate to the referee that the petitioner is current with changes and developments in the law:
  - (i) The petitioner must have completed at least 10 hours of continuing legal education courses for each year or portion of a year that the petitioner was ineligible to practice.
  - (ii) The petitioner may further demonstrate that the petitioner is current with changes and developments in the law by showing that the petitioner worked as a law clerk or paralegal or taught classes on legal issues during the period of ineligibility to practice.
- (B) A petitioner who has been ineligible to practice for 5 years or more will not be reinstated under this rule until the petitioner has re-taken and passed the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE).

**(g) Hearing; Notice; Evidence.**

(1) *Notice.* The referee to whom the petition for reinstatement is referred will fix a time and place for hearing, and notice will be provided at least 10 days prior to the hearing to the petitioner, to lawyers representing The Florida Bar, and to such other persons as may be designated by the referee to whom the petition is referred.

(2) *Appearance.* Any persons to whom notice is given, any other interested persons, or any local bar association may appear before the referee in support of or in opposition to the petition at any time or times fixed for the hearings.

(3) *Failure of Petitioner to be Examined.* For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the referee will dismiss the petition for reinstatement unless good cause is shown for such failure.

(4) *Summary Procedure.* If after the completion of discovery bar counsel is unable to discover any evidence on which denial of reinstatement may be based and if no other person provides same, bar counsel may, with the approval of the designated reviewer and staff counsel, stipulate to the issue of reinstatement, including conditions for reinstatement. The stipulation must include a statement of costs as provided elsewhere in these Rules Regulating The Florida Bar.

(5) *Evidence of Treatment or Counseling for Dependency or Other Medical Reasons.* If the petitioner has sought or received treatment or counseling for chemical or alcohol dependency or for other medical reasons that relate to the petitioner's fitness to practice law, the petitioner must waive confidentiality of such treatment or counseling for purposes of evaluation of the petitioner's fitness. The provisions of rule 3-7.1(d) are applicable to information or records disclosed under this subdivision.

**(h) Prompt Hearing; Report.** The referee to whom a petition for reinstatement has been referred by the chief justice will proceed to a prompt hearing, at the conclusion of which the referee will make and file with the Supreme Court of Florida a report that includes the findings of fact and a recommendation as to whether the petitioner is qualified to resume the practice of law. The referee must file the report and record in the Supreme Court of Florida.

**(i) Review.** Review of referee reports in reinstatement proceedings must be in accordance with rule 3-7.7.



**(j) Recommendation of Referee and Judgment of the Court.** If the petitioner is found unfit to resume the practice of law, the petition will be dismissed. If the petitioner is found fit to resume the practice of law, the referee will enter a report recommending, and the court may enter an order of, reinstatement of the petitioner in The Florida Bar; provided, however, that the reinstatement may be conditioned upon the payment of all or part of the costs of the proceeding and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct that led to the petitioner's suspension of membership in The Florida Bar or conduct that led to the petitioner's incapacity; and further provided, however, if suspension or incapacity of the petitioner has continued for more than 3 years, the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment in the discretion of the Supreme Court of Florida, which proof may include certification by the Florida Board of Bar Examiners of the successful completion of an examination for admission to The Florida Bar subsequent to the date of the suspension or incapacity.

**(k) Successive Petitions.** No petition for reinstatement may be filed within 1 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person. In cases of incapacity no petition for reinstatement may be filed within 6 months following an adverse judgment under this rule.

**(l) Petitions for Reinstatement to Membership in Good Standing.**

(1) *Availability.* Petitions for reinstatement under this rule are available to members placed on the inactive list for incapacity not related to misconduct and suspended members of the bar when the disciplinary judgment conditions their reinstatement upon a showing of compliance with specified conditions.

(2) *Style of Petition.* Petitions must be styled in the Supreme Court of Florida and an original and 1 copy filed with the court. A copy must be served on Staff Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323.

(3) *Contents of Petition.* The petition must be verified by the petitioner and accompanied by a written authorization to the District Director of the Internal Revenue Service, authorizing the furnishing of certified copies of the petitioner's tax returns for the past 5 years or since admission to the bar, whichever is greater. The authorization must be furnished on a separate sheet. The petition must have attached as an exhibit a true copy of all disciplinary judgments previously entered against the petitioner. It must also include the petitioner's statement concerning the following:

(A) name, age, residence, address, and number and relation of

dependents of the petitioner;

- (B) the conduct, offense, or misconduct upon which the suspension or incapacity was based, together with the date of such suspension or incapacity;
- (C) the names and addresses of all complaining witnesses in any disciplinary proceedings that resulted in suspension; and the name and address of the referee or judge who heard such disciplinary proceedings or of the trial judge, complaining witnesses, and prosecuting lawyer, if suspension was based upon conviction of a felony or misdemeanor involving moral turpitude;
- (D) the nature of the petitioner's occupation in detail since suspension or incapacity, with names and addresses of all partners, associates in business, and employers, if any, and dates and duration of all such relations and employments;
- (E) a statement showing the approximate monthly earnings and other income of the petitioner and the sources from which all such earnings and income were derived during said period;
- (F) a statement showing all residences maintained during said period, with names and addresses of landlords, if any;
- (G) a statement showing all financial obligations of the petitioner including but not limited to amounts claimed, unpaid, or owing to The Florida Bar Clients' Security Fund or former clients at the date of filing of the petition, together with the names and addresses of all creditors;
- (H) a statement of restitution made for any and all obligations to all former clients and the Florida Bar Clients' Security Fund and the source and amount of funds used for this purpose;
- (I) a statement showing dates, general nature, and ultimate disposition of every matter involving the arrest or prosecution of the petitioner during the period of suspension for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecuting lawyers, and trial judges;

- (J) a statement as to whether any applications were made during the period of suspension for a license requiring proof of good character for its procurement; and, as to each such application, the date and the name and address of the authority to whom it was addressed and its disposition;
- (K) a statement of any procedure or inquiry, during the period of suspension, covering the petitioner's standing as a member of any profession or organization, or holder of any license or office, that involved the censure, removal, suspension, revocation of license, or discipline of the petitioner; and, as to each, the dates, facts, and the disposition and the name and address of the authority in possession of the record;
- (L) a statement as to whether any charges of fraud were made or claimed against the petitioner during the period of suspension, whether formal or informal, together with the dates and names and addresses of persons making such charges;
- (M) a concise statement of facts claimed to justify reinstatement to The Florida Bar;
- (N) a statement showing the dates, general nature, and final disposition of every civil action in which the petitioner was either a party plaintiff or defendant, together with dates of filing of complaints, titles of courts and causes, and the names and addresses of all parties and of the trial judge or judges, and names and addresses of all witnesses who testified in said action or actions; and
- (O) a statement showing what amounts, if any, of the costs assessed against the accused lawyer in the prior disciplinary proceedings against the petitioner have been paid by the petitioner and the source and amount of funds used for this purpose.

(4) *Comments on Petition.* Upon the appointment of a referee and bar counsel, copies of the petition will be furnished by the bar counsel to local board members, local grievance committees, and to such other persons as are mentioned in this rule. Persons or groups that wish to respond must direct their comments to bar counsel. The proceedings and finding of the referee will relate to those matters described in this rule and also to those matters tending to show the petitioner's rehabilitation, present fitness to resume the practice of law, and the effect of such proposed reinstatement upon the administration of justice and purity of the courts and confidence of the public in the profession.

(5) *Costs Deposit.* The petition must be accompanied by a deposit for costs of \$500.

**(m) Costs.**

(1) *Taxable Costs.* Taxable costs of the proceedings must include only:

- (A) investigative costs, including travel and out-of-pocket expenses;
- (B) court reporters' fees;
- (C) copy costs;
- (D) telephone charges;
- (E) fees for translation services;
- (F) witness expenses, including travel and out-of-pocket expenses;
- (G) travel and out-of-pocket expenses of the referee;
- (H) travel and out-of-pocket expenses of counsel in the proceedings, including the petitioner if acting as counsel; and
- (I) an administrative fee in the amount of \$1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee has discretion to award costs and absent an abuse of discretion the referee's award will not be reversed.

(3) *Assessment of Bar Costs.* The costs incurred by the bar in any reinstatement case may be assessed against the petitioner unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Petitioner's Costs.* The referee may assess the petitioner's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar unless it is shown that the costs were unnecessary, excessive, or improperly authenticated.

**(n) Readmission; Applicability.** A former member who has been disbarred, disbarred on consent, or whose petition for disciplinary resignation or revocation has been accepted may be admitted again only upon full compliance with the rules and regulations governing admission to the bar. No application for readmission following disbarment, disbarment on consent, or disciplinary resignation or revocation may be tendered until such time as all restitution and disciplinary costs as may have been ordered or assessed have been paid together with any interest accrued.

(1) *Readmission After Disbarment.* Except as might be otherwise provided in these rules, no application for admission may be tendered within 5 years after the date of disbarment or such longer period of time as the court might determine in the disbarment order. An order of disbarment that states the disbarment is permanent precludes readmission to The Florida Bar.

(2) *Readmission After Disciplinary Resignation.* A lawyer's petition for disciplinary resignation or revocation that states that it is without leave to apply for readmission will preclude any readmission. A lawyer who was granted a disciplinary resignation or revocation may not apply for readmission until all conditions of the Supreme Court order granting the disciplinary resignation or revocation have been complied with.

### **Comment**

To further illuminate the community service requirements of Rule 3-7.10(f)(3)(G), bar members can take guidance from the Florida Supreme Court's decision in *Florida Board of Bar Examiners re M.L.B.*, 766 So. 2d 994, 998-999 (Fla. 2000). The court held that rules requiring community service "contemplate and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens."

Court decisions dealing with reinstatements and other discipline provide further guidance as to what specific actions meet the test of community service. The court approved dismissal of a petition for reinstatement where the respondent had no community service and had devoted all her time during suspension to raising her young children. *Fla. Bar v. Tauler*, 837 So. 2d 413 (Fla. 2003). In a more recent decision, the court did not specifically mention lack of community service in denying reinstatement, but the respondent had shown no evidence of work for others outside his family in his petition. Respondent's community service consisted solely of taking care of his elderly parents and his small child. *Fla. Bar v. Juan Baraque*, 43 So. 3d 691 (Fla. 2010).

## APPENDIX B

### RULE 3-7.13 INCAPACITY NOT RELATED TO MISCONDUCT

(a) **Classification and Effect of Incapacity.** Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity, or other infirmity, the attorney may be classified as an inactive member and shall refrain from the practice of law even though no misconduct is alleged or proved.

(b) **Applicable Rules of Procedure.** Proceedings under this rule shall be processed under the Rules of Discipline in the same manner as proceedings involving acts of misconduct except that emergency or interim proceedings authorized under rule 3-5.2 shall be processed as stated in that rule.

(c) **Reinstatement to Practice.** A member who has been classified as inactive under this rule may be reinstated in the same manner as in proceedings for reinstatement after suspension for acts of misconduct.

(d) **Proceedings Upon Adjudication of Incapacity or Hospitalization Under the Florida Mental Health Act or Under the Authority of Applicable Law.** An attorney who has been adjudicated as incapacitated from the practice of law or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law may be classified as an inactive member and shall refrain from the practice of law. Upon receipt of notice that a member has been adjudicated as incapacitated or is hospitalized under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, The Florida Bar shall file notice thereof with the Supreme Court of Florida. Thereafter the court shall issue an order classifying the member as an inactive member.

If an order of restoration is entered by a court having jurisdiction or the attorney is discharged from hospitalization under the Florida Mental Health Act or the authority of other applicable law concerning the capability of an attorney to practice law, the attorney may be reinstated in the same manner as in proceedings for reinstatement after suspension for acts of misconduct.

(e) **Proceedings Upon Consent to Incapacity.** An attorney may consent to incapacity not for misconduct in the same manner as provided in rule 3-7.9 of these Rules Regulating The Florida Bar.

## APPENDIX C

### SAMPLE PETITION

The following is provided to offer guidance in the preparation of a petition for reinstatement.

It is not all inclusive, however, and individual petitions may require more or varied information.

#### IN THE SUPREME COURT OF FLORIDA

The Florida Bar,

Supreme Court Case No. SCCaseNo

Re: RNAME,

Petitioner.

\_\_\_\_\_ /

#### **PETITION FOR REINSTATEMENT**

(Respondent), [OPTIONAL: if represented -- by undersigned counsel]

respectfully files this petition for reinstatement to membership in good standing in

The Florida Bar pursuant to rule 3-7.10, Rules of Discipline.

< proof of remittance to The Florida Bar of the sum of \$500  
representing a deposit for costs;

< proof of payment of all disciplinary costs assessed against respondent;  
and

< authorization on separate sheet to the District Director of  
Internal

Revenue Service for release of petitioner's federal income tax returns  
since admission to the bar.

Also attached as an exhibit is a true copy of all disciplinary judgments

previously entered against the petitioner.

The following additional information is furnished in compliance with rule 3-7.10.

- (1) name, age, address, dependents
- (2) date of suspension and offense
- (3) name(s) and addresses of complainant(s) and referee(s) in disciplinary proceedings
- (4) occupation since suspension, names and addresses of partners, dates and duration of employment
- (5) monthly income and other earnings
- (6) residence(s), with name(s) and address(es) of landlord(s) (since suspension or separation from the bar)
- (7) financial obligations and creditors (including judgments)
- (8) statement of restitution to former clients
- (9) record of arrests and prosecutions
- (10) applications for licenses requiring proof of good character
- (11) proceedings involving standing as member of any organization or as license holder subsequent to disbarment
- (12) proceedings or charges involving claims of fraud subsequent to suspension
- (13) grounds for reinstatement (Petition of Wolf, 257 So.2d 547 (Fla. 1972); The Florida Bar ex rel. McGraw, 903 So.2d 905 (Fla. 2005); The Florida Bar re Wolf, 21 So. 3d 15 (Fla. 2009).)
- (14) all civil actions
- (15) community service provided during suspension

WHEREFORE, Petitioner prays that he/she be reinstated as a member in good standing of The Florida Bar.



\_\_\_\_\_  
(Petitioner)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_, who is personally known to me or who has  
produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

## **APPENDIX D**

### **Sample Check List\***

#### **Petition for Reinstatement**

1. Review Petition for Reinstatement
2. Review Reinstatement Manual
3. Review Referee file
4. Make appointment with Petitioner for review of Petition for Reinstatement
5. Interview Petitioner
6. Prepare letters to local newspapers
7. Prepare letter to The Florida Bar News
8. Prepare letters to the Designated Reviewers and local bar association presidents
9. Submit letter to the Internal Revenue Service
10. Review public records
11. Review Civil Circuit Court records
12. Review Criminal Court records
13. Review U. S. Bankruptcy Court records
14. Interview references
15. Interview employers
16. Check with FLA, Inc. if applicable
17. Interview prosecutor, judge, etc. if criminal violation
18. Interview original complainant and referee
19. Character evidence
20. Check DMV records if DUI related conduct
21. Conduct NCIC/FCIC arrest record check
22. Check other state agencies if involved.
23. Child support payments
24. Branch auditor review of income tax returns
25. Contact CLE
26. Spot check Notice to clients and Courts of suspension
27. Review closure of law office to assure client prejudice was minimized. If law practice was assumed by another attorney, assure that clients were properly noticed and Petitioner did not obtain legal fees earned while Petitioner was suspended.
28. Depose Petitioner

\* This list is provided for guidance only and is not intended to be all inclusive.



# The Florida Bar

651 E Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
[www.floridabar.org](http://www.floridabar.org)

Date \_\_\_\_\_

(Petitioner/Counsel for Petitioner)

\_\_\_\_\_(Address)

\_\_\_\_\_

Re: The Florida Bar v. \_\_\_\_\_  
TFB File No. \_\_\_\_\_

Dear \_\_\_\_\_:

Our records show that your client has paid all requisite costs and submitted the affidavit pursuant to Rule 3-5.1(h). Therefore, your client's file with this office has been closed.

Please do not hesitate to contact me at (850) 561-3186 should you have any further questions.

Sincerely,

Lisa Chason, Legal Secretary  
Lawyer Regulation Headquarters