

(e) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When an attorney's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property for missing owners, such funds or property shall be so designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as his trust property. If a missing beneficial owner is located, the trust funds or property shall be paid over or delivered to the beneficial owner if he is then entitled to receive the same. Trust funds and property which remain unidentifiable and funds or property which are held for missing owners after being designated as such ~~shall may~~, after diligent search and inquiry fails to identify the beneficial owner or owner's address, be disposed of ~~be reported to The Florida Bar with a request that The Florida Bar accept such money or property and hold the same in trust for the missing or unidentified owners and for ultimate disposition as provided in Chapter 717, Florida Statutes. If The Florida Bar declines to accept the subject money or property then within one year after the money or property is designated as an unidentified accumulation or being held for missing owners the attorney shall petition the circuit court for declaration of abandoned property as provided in Section 717.131, Florida Statutes, and serve a copy of the petition on The Florida Bar.~~

Proposed "Rules Regulating The Florida Bar," Section 5-1.1(e) must be amended as follows:

5-1.1(e) Unidentifiable trust fund accumulations and trust funds held for missing owners. When an attorney's trust account contains an unidentifiable accumulation of trust

funds or property, or trust funds or property held for missing owners, such funds or property shall be so designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as his trust property. If a missing beneficial owner is located, the funds or property shall be paid over or delivered to the beneficial beneficiary owner if he is then entitled to receive the same. Trust funds and property which remain unidentifiable and funds or property which are held for missing owners after being designated as such shall may, after diligent search and inquiry fails to identify the beneficial owner or owner's address, be disposed of be reported to The Florida Bar with a request that The Florida Bar accept such money or property and hold the same in trust for the missing or unidentified owners and for ultimate disposition as provided in Chapter 717, Florida Statutes. If The Florida Bar declines to accept the subject money or property, then within one year after the money or property is designated as an unidentified accumulation or being held for missing owners the attorney shall petition the circuit court for declaration of abandoned property as provided in Section 717.131, Florida Statutes, and shall serve a copy of the petition on The Florida Bar.

(b) These proposed amendments remove the provision of the current rule which authorizes a member of The Florida Bar to report unidentified or unclaimed trust deposits to The Florida Bar and request that the Bar accept the same, prior to proceeding under Chapter 717, Florida Statutes, to receive judicial direction as to the disposition of the accumulated funds. The Bar is currently declining to accept control over all funds reported under the existing rule. The reason for the Bar's declination is that the

personnel and financial costs associated with a properly administered program concerning these funds far outweighs the resulting benefits.

Chapter 717, Florida Statutes, provides a fair and orderly process for the disposition of abandoned property such as unidentified trust fund accumulations.

5.(a) The proposed amendment to Florida Bar Integration Rule, article XI, Rule 11.08(5) ("Rules Regulating The Florida Bar," Section 3-7.11(a)(4)), is as follows:

(5) If resignation is accepted under this rule, such resignation shall serve to dismiss all pending disciplinary cases. The resigned attorney may be ~~then again admitted to the Bar upon application to and approval by the Board of Governors~~ reinstated as a member of The Florida Bar in good standing pursuant to Rule 11.11 and upon full compliance with any conditions required by the judgment which granted the leave to resign. ~~A rejection of such application may be reviewed by petition to Supreme Court.~~

The proposed amendment also requires amendment of Section 3-7.11(a)(4), "Rules Regulating The Florida Bar," as follows:

(4) Dismissal of Pending Disciplinary Cases. If resignation is accepted under this rule, such resignation shall serve to dismiss all pending disciplinary cases. The resigned attorney may be ~~then again admitted to the Bar upon application to and approval by the Board~~ reinstated as a member of The Florida Bar in good standing pursuant to Section 3-7.9, hereof and upon full compliance with any conditions required by the judgment which granted leave to

resign. A rejection of such application may be reviewed by petition to the Supreme Court.

(b) These proposed amendments conform the language of current Florida Bar Integration Rule, article XI, Rule 11.08(5) to that of Rule 11.11 and amends the proposed "Rules Regulating The Florida Bar" to reflect consistency with the Integration Rule, both now clearly stating that a resigned attorney is reinstated, not readmitted, to Bar membership.

6. The proposed amendment to Florida Bar Integration Rule, article XI, Rule 11.08(6) ("Rules Regulating The Florida Bar", Section 3-7.9(m)), is as follows:

(6) In the case of a resignation submitted in connection with a disciplinary action, ~~no readmission application~~ a petition for reinstatement may not be filed until three years after the date of Supreme Court order which accepted such resignation or such additional time as the attorney may have stated in his petition to resign, nor until all costs in disciplinary cases that were dismissed because of the resignation have been paid by the applicant for ~~readmission reinstatement~~. If an attorney's petition to resign states that it is without leave to apply for ~~readmission reinstatement~~ permanently, such condition shall preclude any ~~readmission reinstatement~~.

The proposed amendment to "Rules Regulating The Florida Bar", Section 3-7.9(m) is as follows:

3-7.9(m) Reinstatement ~~Readmission~~. In the case of a resignation submitted in connection with a disciplinary action, ~~no readmission application~~ petition for reinstatement may be filed until three years after the date of the Supreme Court order which accepted such resignation or such

additional time as the attorney may have stated in a petition to resign and not until all costs in disciplinary cases that were dismissed because of resignation have been paid by the applicant for ~~readmission~~ reinstatement. If an attorney's petition to resign states that it is without leave to apply for ~~readmission~~ reinstatement permanently, such condition shall preclude any ~~readmission~~ reinstatement.

(b) These proposed amendments conform the language of Florida Bar Integration Rule, article XI, Rule 11.08(6) to that of Rule 11.11 and make it clear that attorneys who resign their membership in The Florida Bar when disciplinary charges are pending must comply with reinstatement procedures provided under Rule 11.11. Such proceedings will require a showing of rehabilitation, which is necessary to provide assurance that the public will be adequately protected against continued professional misconduct. These amendments also require amendment to Section 3-7.9(m), "Rules Regulating The Florida Bar", in order to conform that section with the amendments to the Integration Rule.

7. The proposed amendment to Florida Bar Integration Rule, article XI, Rules 11.11 and 11.11(9) (Sections 3-7.9(b) and 3-7.9(k), "Rules Regulating The Florida Bar"), are as follows:

An attorney who has been suspended or has resigned ~~for cause~~ pursuant to Rule 11.08 may be reinstated to membership in The Florida Bar pursuant to this rule. The proceedings under this rule are not applicable to suspension for nonpayment of dues.

* * * *

(9) Judgment. If the petitioner is found unfit to resume the practice law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the

judgment shall reinstate him in The Florida Bar; provided, however, that the judgment may make such reinstatement conditional upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct which led to the suspension or resignation of his membership in The Florida Bar; and further provided, however, that if suspension or resignation of petitioner has continued for more than three years, the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the Supreme Court, 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 suspension or resignation.

The proposed amendments to these sections of the Integration Rule also require amendments to Sections 3-7.9(b) and 3-7.9(k), "Rules Regulating The Florida Bar."

The proposed amendment to Section 3-7.9(b), "Rules Regulating The Florida Bar," is as follows:

3-7.9(b) An attorney who has been suspended or has resigned ~~for cause~~ pursuant to Section 3-7.11 of these rules may be reinstated to membership in The Florida Bar pursuant to this rule. The proceedings under this rule are not applicable to suspension for nonpayment of dues.

The proposed amendment to Section 3-7.9(k), "Rules Regulating The Florida Bar," is as follows:

3-7.9(k) Judgment. If the petitioner is found unfit to resume the practice of law the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him in The Florida Bar;

provided, however, that the judgment may make such reinstatement conditional 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 which led to the petitioner's suspension or resignation of membership in The Florida Bar; and further provided, however, that if suspension or resignation of petitioner has continued for more than three 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, 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 resignation.

(b) This amendment deletes the language "for cause" from the applicability clause of Rule 11.11 of the Integration Rule and identifies the specific rule which applies to resignations pending disciplinary proceedings. This amendment also clarifies that judgments, entering a ruling arising out of Rule 11.11 proceedings, also include reinstatements following resignations under Rule 11.08. Sections 3-7.9(b) and (k), "Rules Regulating The Florida Bar", are also proposed to be amended to be consistent with the Integration Rule.

8.(a) The proposed amendment to Florida Bar Integration Rule, article XI, Section 11.04(7) (Section 3-7.4(b), "Rules Regulating The Florida Bar"), is as follows:

(7) Review of grievance committee action by the designated reviewer. A designated reviewer at any time may review the actions of a grievance committee and shall review those grievance committee actions referred to him in writing. If the designated reviewer disagrees with the grievance

committee action, he shall make a report and recommendation to the Disciplinary Review Committee. In those matters referred in writing, ~~by Bar headquarters staff counsel~~ the designated reviewer shall make the report and recommendations within 21 days following the mailing date of the referral; otherwise the grievance committee action shall stand.

Not struck through

The proposed amendment to Section 3-7.4(b), " Rules Regulating The Florida Bar", is as follows:

3-7.4(b) Review by the Designated Reviewer. A designated reviewer at any time may review the actions of a grievance committee and shall review those grievance committee actions referred to him in writing. If the designated reviewer disagrees with the grievance committee action, the designated reviewer shall make a report and recommendations to the Disciplinary Review Committee. In those matters referred in writing ~~by staff counsel~~ the designated reviewer shall make the report and recommendations within 21 days following the mailing date of the referral; otherwise the grievance committee action shall stand.

(b) These proposed amendments make it clear that the duty of the designated reviewer is to review only those actions of a grievance committee referred to him in writing. It also makes it clear that the designated reviewer has 21 days to report on those matters referred to him in writing, regardless of the source of referral. The 21-day limitation on review will avoid delay at this level of processing of disciplinary cases.

9. The Florida Bar does not intend to file a brief in support of this petition unless requested by the Court.

10. Pursuant to Florida Bar Integration Rule, article XIII, this petition will be published in the September 1, 1984 edition of The Florida Bar News.

11. The Florida Bar requests that the proposed amendments set forth hereinabove be considered in conjunction with "Rules Regulating The Florida Bar" pending before this Court in case number 65,197. *o/a - 11-5-84*

WHEREFORE, The Florida Bar prays the Court will enter an order approving the amendments as set forth above.

Respectfully submitted,

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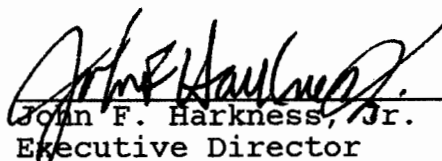
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