

RULE 3-5.1 GENERALLY

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

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4 **(a) Admonishments.** A Supreme Court of Florida order finding minor
5 misconduct and adjudging an admonishment may direct the respondent to appear before
6 the Supreme Court of Florida, the board of governors, grievance committee, or the referee
7 for administration of the admonishment. A grievance committee report and finding of
8 minor misconduct or the board of governors, upon review of such report, may direct the
9 respondent to appear before the board of governors or the grievance committee for
10 administration of the admonishment. A memorandum of administration of an
11 admonishment shall thereafter be made a part of the record of the proceeding.

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

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

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

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

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

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

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

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

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36 (2) Discretion of Grievance Committee. Despite the presence of 1 or more of the
37 criteria described in subdivision (1) above, a grievance committee may recommend an
38 admonishment for minor misconduct or diversion to a practice and professionalism

39 enhancement program when unusual circumstances are present. When the grievance
40 committee recommends an admonishment for minor misconduct or diversion to a practice
41 and professionalism enhancement program under such circumstances, its report shall
42 contain a detailed explanation of the circumstances giving rise to the committee's
43 recommendation.

44
45 (3) Recommendation of Minor Misconduct. If a grievance committee finds the
46 respondent guilty of minor misconduct or if the respondent shall admit guilt of minor
47 misconduct and the committee concurs, the grievance committee shall file its report
48 recommending an admonishment, recommending the manner of administration, and for
49 the taxing of costs against the respondent. The report recommending an admonishment
50 shall be forwarded to staff counsel and the designated reviewer for review. If staff counsel
51 does not return the report to the grievance committee to remedy a defect therein, or if the
52 report is not referred to the disciplinary review committee by the designated reviewer (as
53 provided in rule 3-7.5(b)), the report shall then be served on the respondent by bar
54 counsel. The report and finding of minor misconduct shall become final unless rejected
55 by the respondent within 15 days after service of the report. If rejected by the respondent,
56 the report shall be referred to bar counsel and referee for trial on complaint of minor
57 misconduct to be prepared by bar counsel as in the case of a finding of probable cause.
58 If the report of minor misconduct is not rejected by the respondent, notice of the finding

59 of minor misconduct shall be given, in writing, to the complainant.

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61 (4) Rejection of Minor Misconduct Reports. The rejection by the board of
62 governors of a grievance committee report of minor misconduct, without dismissal of the
63 case, or remand to the grievance committee, shall be deemed a finding of probable cause.
64 The rejection of such report by a respondent shall be deemed a finding of probable cause
65 for minor misconduct. Upon trial before a referee following rejection by a respondent of
66 a report of minor misconduct, the referee may recommend any discipline authorized
67 under these rules.

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69 (5) Admission of Minor Misconduct. Within 15 days after a finding of probable
70 cause by a grievance committee, a respondent may tender a written admission of minor
71 misconduct to bar counsel or the grievance committee. An admission of minor
72 misconduct may be conditioned upon acceptance by the grievance committee, but the
73 respondent may not condition the admission of minor misconduct upon the method of
74 administration of the admonishment or upon nonpayment of costs incurred in the
75 proceedings. Such an admission may be tendered after a finding of probable cause (but
76 before the filing of a complaint) only if such an admission has not been previously
77 tendered. If the admission is tendered after a finding of probable cause, the grievance
78 committee may consider such admission without further evidentiary hearing and may

79 either reject the admission, thereby affirming its prior action, or accept the admission and
80 issue its report of minor misconduct. If a respondent's admission is accepted by the
81 grievance committee, the respondent may not thereafter reject a report of the committee
82 recommending an admonishment for minor misconduct. If the admission of minor
83 misconduct is rejected, such admission shall not be considered or used against the
84 respondent in subsequent proceedings.

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86 **(c) Probation.** The respondent may be placed on probation for a stated period of
87 time of not less than 6 months nor more than 3 years or for an indefinite period
88 determined by conditions stated in the order. The judgment shall state the conditions of
89 the probation, which may include but are not limited to the following: completion of a
90 practice and professionalism enhancement program as provided elsewhere in these rules;
91 supervision of all or part of the respondent's work by a member of The Florida Bar; the
92 making of reports to a designated agency; the satisfactory completion of a course of study
93 or a paper on legal ethics approved by the Supreme Court of Florida; such supervision
94 over fees and trust accounts as the court may direct. The respondent will also reimburse
95 the bar for the costs of supervision. Failure to observe the conditions of the probation or
96 a finding of probable cause as to conduct of the respondent committed during the period
97 of probation shall terminate the probation. In such event, even though such finding of
98 probable cause shall be made after the expiration of the period of probation, the judgment

99 shall be reconsidered and an appropriate judgment shall be entered. On termination of
100 probation for failure to observe the conditions of probation or on a finding of probable
101 cause for misconduct committed during the period of probation, the attorney may be
102 punished for contempt or suspended from the practice of law on petition by The Florida
103 Bar, and any such suspension shall continue until the respondent may be reinstated to the
104 practice of law as provided elsewhere in these rules.

105

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

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114 **(e) Suspension.** The respondent may be suspended from the practice of law for
115 a definite period of time or an indefinite period thereafter to be determined by the
116 conditions imposed by the judgment. During such suspension the respondent shall
117 continue to be a member of The Florida Bar but without the privilege of practicing, and,
118 upon the expiration of the suspension period and the satisfaction of all conditions

119 accompanying the suspension, the respondent shall become eligible to all of the
120 privileges of members in The Florida Bar. A suspension of 90 days or less shall not
121 require proof of rehabilitation or passage of the Florida bar examination. A suspension
122 of more than 90 days shall require proof of rehabilitation and may require passage of all
123 or part of the Florida bar examination. No suspension shall be ordered for a specific
124 period of time in excess of 3 years.

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126 **(f) Disbarment.** A judgment of disbarment terminates the respondent's status as
127 a member of the bar. Permanent disbarment shall preclude readmission. A former
128 member who has not been permanently disbarred may only be admitted again upon full
129 compliance with the rules and regulations governing admission to the bar. Except as
130 might be otherwise provided in these rules, no application for admission may be tendered
131 within 5 years after the date of disbarment or such longer period as the court might
132 determine in the disbarment order.

133
134 **(g) Notice to Clients.** Upon service on the respondent of an order of disbarment,
135 suspension, resignation for cause, emergency suspension, or placement on the inactive
136 list, the respondent shall, unless this requirement is waived or modified in the court's
137 order, forthwith furnish a copy of the order to all of the respondent's clients with matters
138 pending in the respondent's practice, and within 30 days after service of the order the

139 respondent shall furnish staff counsel of The Florida Bar with a sworn affidavit listing the
140 names and addresses of all clients who have been furnished copies of the order.

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

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150 **(i) Restitution.** In addition to any of the foregoing disciplinary sanctions and any
151 disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered
152 or agree to pay restitution to a complainant or other person if the disciplinary order finds
153 that the respondent has received a clearly excessive, illegal, or prohibited fee or that the
154 respondent has converted trust funds or property. In such instances the amount of
155 restitution shall be specifically set forth in the disciplinary order or agreement and shall
156 not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or
157 illegal fee shall not exceed the amount of such fee, or in the case of conversion shall not
158 exceed the amount of the conversion established in disciplinary proceedings. The

159 disciplinary order or agreement shall also state to whom restitution shall be made and the
160 date by which it shall be completed. Failure to comply with the order or agreement shall
161 not preclude further proceedings under these rules.

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163 **(j) Disciplinary Resignation.** A respondent may be allowed to resign
164 membership in The Florida Bar in lieu of defending against allegations of disciplinary
165 violations. If accepted by the Supreme Court of Florida, a disciplinary resignation
166 terminates the respondent's status as a member of the bar. A former member whose
167 disciplinary resignation has been accepted may only be admitted again upon full
168 compliance with the rules and regulations governing admission to the bar. Disciplinary
169 resignation is the functional equivalent of disbarment in that both sanctions terminate the
170 license and privilege to practice law and both require readmission to practice under the
171 Rules of the Supreme Court Relating to Admissions to the Bar. Except as otherwise
172 provided in these rules, no application for admission may be tendered within 3 years after
173 the date of the order of the Supreme Court of Florida that accepted the disciplinary
174 resignation or such additional time as the respondent may have stated in the petition for
175 disciplinary resignation. A petition that states that disciplinary resignation is without
176 leave to apply for readmission shall preclude readmission to the bar.