

12th Judicial Circuit Peer Review Program

PROCEDURE FOR ADDRESSING LAWYER REFERRALS

The 12th Judicial Circuit has established a Peer Review process that allows any judge, magistrate, hearing officer, or attorney to refer an attorney to the Peer Review Council ("PRC") for unprofessional conduct that is believed to be inconsistent with the 12th Judicial Circuit's Professionalism Standards ("Standards"). The purpose of this Program is to provide an Orderly and efficient method for peer review.

The Peer Review Program is not intended to be a disciplinary process but rather an educational process intended to improve the practice of law within the 12th Judicial Circuit.

DEFINITIONS

- A. **"Referral"** means a letter directed to the Chief Judge of the 12th Judicial Circuit.
- B. **"Referring Party"** means the judge, magistrate, hearing officer or attorney who initiates the Referral.
- C. **"Referred Attorney"** means the attorney who is the subject of the Referral.
- D. **"Peer Review Council" ("PRC")** shall be comprised of a total of eight local attorneys, made up as follows: two attorneys appointed by the Chief Judge, two attorneys appointed by the President of the Sarasota County Bar Association ("**SCBA**"), two attorneys appointed by the President of the Manatee County Bar Association ("**MCBA**"), one attorney appointed by the President of the Sarasota County Bar Association-South County Division ("**SCBA-South County Division**"), and one attorney appointed by the President of the DeSoto County Bar Association ("**DCBA**"). From these eight, the Chief Judge shall appoint the Chair of the PRC.

All attorneys on the PRC must be members in good standing of The Florida Bar with a minimum of 10 years of practice in various fields of law, as well as active members of their respective local Bar Association. The PRC may be updated annually at the discretion of each appointer. A quorum of any meeting of the PRC shall consist of five members.
- E. **"PRC Panel"** means the three (3) attorney panel appointed by the Chair of the PRC to review a Referral. PRC Panels shall be selected on a rotating basis as necessary.
- F. The **"PRC Board"** means the Chief Judge, the Administrative Judges for each division within the Circuit; the Presidents of the SCBA, MCBA, SCBA-South County Division and DCBA, respectively; and the members of the PRC. Additionally, if such persons choose to participate, a representative of the Florida Bar Board of Governors of the 12th Judicial Circuit and the President of the YLD of the SCBA shall serve on the PRC Board. The Chair of the PRC Board shall be the Chief Judge or someone appointed by the Chief Judge.

G. The "**Board Advisory Delegates**" means the three (3) person panel appointed by the Chair of the PRC Board to review a Referral. No more than two (2) of the appointees on any given Referral may be judges. PRC Board Delegates shall be selected on a rotating basis as necessary.

PROCEDURE

1. The Referring Party shall send a written Referral to the Chief Judge. The Referral must include the following information and must be signed by the Referring Party:

a. the name, address and telephone number of the Referring Party and of the Referred Attorney;

b. the facts upon which the Referral is based, including production of all documents which support, contradict or mitigate the allegations in the Referral;

c. the names of any other persons who witnessed or have first hand knowledge of the alleged conduct;

d. which Standards the Referring Party believes were violated; and,

e. a sworn recital that the Referring Party will keep any communications regarding the Referral confidential, and will destroy upon conclusion any writings not generated by the Referring Party but pertaining to the Referral.

2. The Chief Judge shall review the Referral to determine if it appears to state a violation of the Standards and shall then forward the Referral to the Chair of the PRC within ten (10) days of receipt of the Referral. If the Chief Judge determines that the Referral sets forth conduct which would rise to the level of a Florida Bar Grievance, the Chief Judge will so advise the Chair of the PRC when the Chief Judge transmits the referral.

3. The Chair of the PRC shall review the Referral within seven (7) days of receipt. In the event that the Referral sets forth conduct which would rise to the level of a Florida Bar Grievance, the Chair of the PRC shall so advise the Referring Party and no further action shall be taken with respect to the referral. If the Referral sets forth conduct which does not rise to the level of a Florida Bar Grievance, the Chair of the PRC within the same seven (7) day period shall appoint a PRC Panel to consider the Referral.

Referral to PRC Panel

4.a. Within ten (10) days from the date that PRC Panel is appointed, it may contact the Referring Party to request additional information or documents as needed, but is not obligated to independently investigate the allegations contained in the Referral.

4.b. If the PRC Panel determines that the Referral, within the four corners of the Referral, appears to show that the Standards or a Standard has been violated, then the PRC Panel shall ask the Referring Party if s/he wants his or her identity to remain confidential until the Referred Attorney agrees to participate in the Peer Review.

4.c. The PRC Panel shall send the Referred Attorney written notice advising that the Referral appears to state a violation of the Standards, provide the Referred Attorney with either a photocopy of the Referral (or a summary of the allegations in the Referral if the Referring Party wishes to remain confidential until the Referred Attorney has agreed to participate in the Peer Review process) and allow the Referred Attorney twenty (20) days from the date of the written notice to respond to the PRC Panel. All communication with the Referred Attorney shall be prominently marked "Personal and Confidential," and shall be addressed to the Referred Attorney.

4.d. Within said twenty (20) day period, the Referred Attorney may submit a written explanation and attach additional documents, and the Referred Attorney must sign the written response, if any.

4.e. Upon receipt of the Referred Attorney's response, or after the expiration of twenty-five (25) days from the date of the written notice to the Referred Attorney, the PRC Panel shall determine if, based on all of the material before them, (i) there is no violation of any Standard, (ii) there is a violation of one or more Standards but the Referred Attorney admits fault and regret, or (iii) that a violation of one or more Standards occurred without justification.

5. If a majority of the PRC Panel determines that no violation has occurred, then the PRC Panel shall so notify both the Referring Party and the Referred Attorney in writing and the consideration of the Referral shall be complete. In this event the Referral and all accompanying documents shall be destroyed immediately.

6.a. If a majority of the PRC Panel determines that a violation has occurred, then the PRC Panel shall prepare a written report containing a brief summary of the facts upon which the referral is based, a statement of the Standards that have been violated, the conclusions drawn by the PRC Panel, the recommended disposition and a brief statement of reasons supporting the recommendation. In this report the PRC Panel may, if it believes such to be relevant, note that the actions of the Referred Attorney were an isolated incident and/or that the Referred Attorney admits fault and regret.

6.b. The PRC Panel shall transmit its written report and all copies of the Referrals and materials relating to the Referral to the Chair of the PRC within fourteen (14) days of preparing its written report. The PRC Panel's report shall be final and is not subject to rehearing, amendment or modification by the PRC Panel or the PRC.

6.c. The PRC Panel shall transmit its report to the Referred Attorney. If within ten (10) days the Referred Attorney accepts in writing the recommended disposition of the PRC Panel, the Chairman of the PRC shall notify the Chief Judge and then monitor the matter so see that the Referred Attorney has complied with the recommended disposition of the PRC Panel.

If the Referred Attorney does not agree with the recommended disposition and is unwilling to comply with the recommended disposition, the matter shall be referred to the PRC Board.

Referral to the PRC Board

7. The Chair of the PRC then shall forward the PRC Panel's report, the Referral, and all accompanying materials to the Chair of the PRC Board within seven (7) days of receipt of the PRC Panel's report. The Chair of the PRC Board shall appoint the Board Advisory Delegates within seven (7) days of receipt of the PRC Panel's report. The Chair of the PRC Board shall endeavor to appoint judge members before whom the Referred Attorney does not regularly appear. The Chair of the PRC Board shall forward all materials to a non-judge member of the Board Advisory Delegates.

8. Within twenty (20) days of receipt of the PRC Panel's report, the Referral and all accompanying materials, the Board Advisory Delegates shall set a date for a meeting between the Referred Attorney and the Board Advisory Delegates. The meeting shall occur no later than twenty-five (25) days from the Chair of the PRC Board's receipt of the PRC Panel's report, if possible. Notice of the meeting shall be in writing and transmitted to all Board Advisory Delegates and the Referred Attorney and shall be prominently marked "Personal and Confidential". The meeting shall be closed to the public, and all statements made during the meeting shall remain confidential for all purposes.

9. The Board Advisory Delegates may do any or all of the following at its meeting with the Referred Attorney:

- a. Identify and discuss the violated Standard or Standards and explain their purpose.
- b. Discuss the conduct of the Referred Attorney and explain the reasons for the violation.
- c. Recommend ways in which the Referred Attorney should alter his/her conduct in the future to avoid a recurrence of the conduct.
- d. Make other non-punitive suggestions/recommendations to the Referred Attorney as the Board Advisory Delegates, in its discretion, may deem helpful to the Referred Attorney.

10. The Board Advisory Delegates may not do any of the following at or after its meeting with the Referred Attorney:

- a. Impose any sanction or penalty.
- b. Embarrass, harass or belittle the Referred Attorney.
- c. Prepare any writing containing its findings, unless such writing omits mention of any names.

11. After the meeting with the Board Advisory Delegates, the PRC Panel's report, the Referral, and all accompanying documents shall be destroyed immediately. The only record kept of the proceedings will be an anonymous evaluation sheet of the type used in CLE seminars.

GENERAL PROVISIONS

12. Any member of the PRC or PRC Board may abstain from reviewing a particular Referral if s/he believes that s/he for any reason cannot be completely objective and fair throughout the review process. If at any time a PRC attorney or a PRC Board member feels that there is a conflict of interest concerning that person's evaluation of a Referral, then such member may excuse him or herself from further proceedings about the Referral by advising the PRC or the PRC Board of the conflict and taking no further part in the proceedings. Upon such recusal, the Chair of the PRC or the Chair of the PRC Board shall appoint a replacement. Any judge should abstain from reviewing a Referral if it appears that the Referred Attorney's majority of practice is in the same area of law.

13. Once the Chief Judge forwards a Referral to the Chair of the PRC, no other written material shall be prepared by, or under the auspices of, any of the judge members of the PRC or PRC Board.

14. All Referrals, supporting materials, and reports received or generated by the PRC, the PRC Panel, the PRC Board, or the Board Advisory Delegates shall be considered the property of the participating Bar Associations until such documents are destroyed at the conclusion of the process.

15. No member of the PRC or PRC Board shall speak directly to the Referred Attorney or to the Referring Party about the subject of the referral while a referral is pending with the exception of the Chair of the PRC, the PRC Panel or Board Advisory Delegates' communications with the Referred Attorney in accordance with this Procedure.

16. All aspects of the PRC's and the PRC Board's review shall be confidential except that in appropriate instances the PRC Board shall notify the Referring Party that a violation of the Standards was found on the referral.

17. The PRC Rules may be amended from time to time by a majority vote of the PRC, subject to approval by the Board of Directors of the participating Bar Associations and the Chief Judge of the 12th Judicial Circuit.