

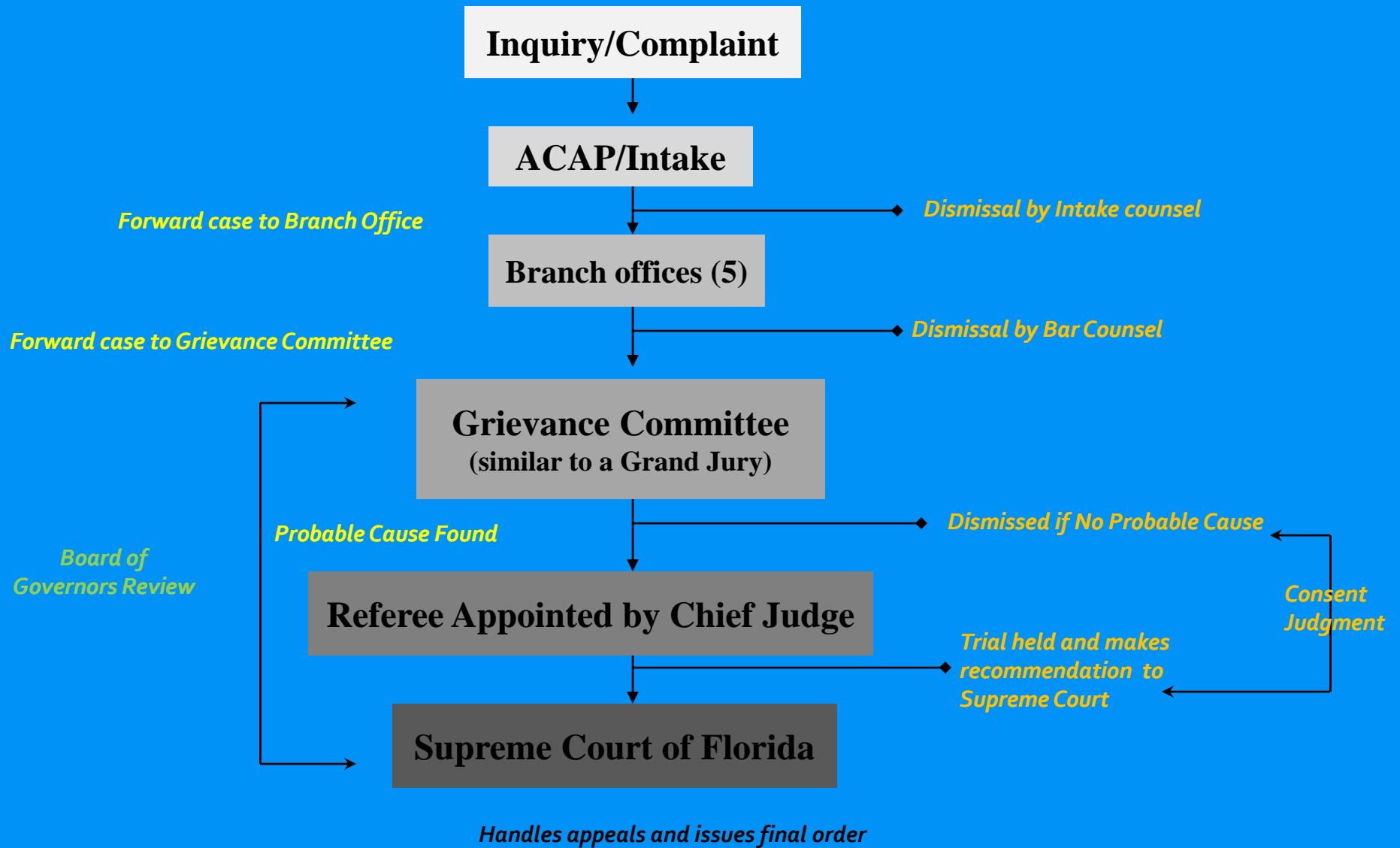
GRIEVANCE COMMITTEE INSTITUTE

Overview...

- ❑ **Discipline System**
- ❑ **ACAP/Intake Staff Level Review**
- ❑ **Grievance Proceedings**
- ❑ **Grievance Committee Hearings**
- ❑ **Grievance Committee Options**
- ❑ **Review and Trial**
- ❑ **Role of Bar Counsel**



DISCIPLINARY SYSTEM



Initial Review



ATTORNEY CONSUMER ASSISTANCE PROGRAM

- Telephone Inquires
- Written Inquires
- ACAP Processing/Intake Process
- [ACAP Hotline \(866\) 352-0707](tel:8663520707)



ACAP/INTAKE STAFF REVIEW

- **Inquiry/complaint can be initiated by a member of the public, judiciary, or the Bar**
 - Does the Bar have jurisdiction?
 - Would the conduct, if true, constitute a violation of Bar Rules?
- **If the answer is yes to both, then the inquiry is treated as a Complaint**
 - Attorney is asked to respond
 - Complainant may submit a rebuttal
 - ACAP Attorney conducts a review
- **Options**
 - Closure
 - Refer for Mediation/Fee Arbitration
 - Refer to branch office for further investigation





Referral to Bar Counsel

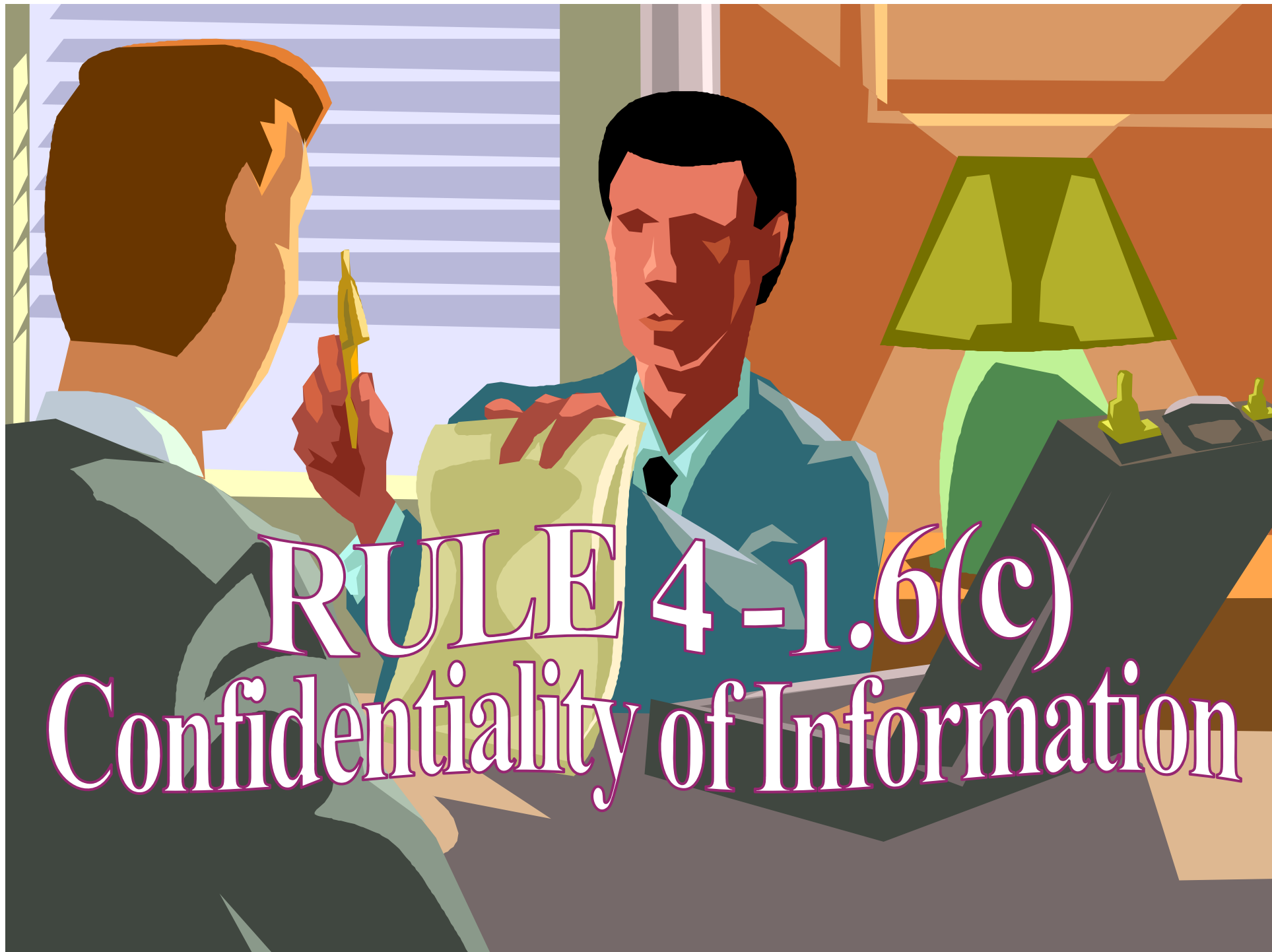
BAR COUNSEL

- The Florida Bar employs 32 attorneys to serve as Bar Counsel located in five branches across Florida
- May conduct additional investigation, dismiss the complaint, or forward the case to the grievance committee.
- Assists the committee with investigation and may prepare agendas and case summaries.



BAR COUNSEL con't...

- Notifies complainants and respondents of committee action as appropriate.
- Prepares all reports finding PC, no PC, recommendations of minor misconduct, and letters of advice.
- Prepares and files formal complaints after a finding of PC.



RULE 4-1.6(c)

Confidentiality of Information

CONFIDENTIALITY

- Everything is confidential until the file is closed or there is a finding of probable cause.
- Investigations not limited by confidentiality.
- Exceptions: evidence of crime, matters within the public domain.
- Nothing precludes the respondent, complainant, or witnesses from disclosing the existence of the proceedings or any documents or correspondence served on or provided to that person.



ROLE OF THE GRIEVANCE COMMITTEE CHAIR

- Assigns members to investigate cases
- Presides over live hearings
- Rules on requests/motions submitted by respondent
- Signs subpoenas
- Signs letters of advice
- Approves formal complaints drafted by Bar Counsel
- Conducts file reviews of cases closed by staff, when closure is challenged by the complainant (SBP 15.75)

RECUSAL

- Recusal required under Rule 3-3.4(c) if member:
 - Is related by blood or marriage to the complainant or respondent.
 - Has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent.
 - Has a personal interest that could be affected by the outcome of the proceedings.
 - Is prejudiced or biased toward either the complainant or the respondent.
- Discretionary Recusal
 - Concern over perception of bias
 - Close business, professional, or personal relationship

GRIEVANCE COMMITTEE INVESTIGATIONS

- **Chair assigns an Investigating Member (IM) who:**
 - Speaks with the complainant and the respondent
 - May request additional information from either
 - May request that the Chair issue a subpoena
 - May request that Bar Counsel assign an investigator or staff auditor to assist with the investigation
 - May take sworn statements
 - Should investigate all misconduct regardless of what is contained in the written complaint
 - Makes an oral report to the committee
- **Members of grievance committees may be reimbursed for out-of-pocket expenses incurred in connection with disciplinary investigations.**

REPORTING CASES TO THE FULL COMMITTEE

- Must have a quorum of at least 3 members to vote, 2 of which must be lawyers
- Must have a majority of at least 2 votes
- Lawyer investigating members may not vote
- Vote must be recorded



OPTIONS

- Committee may conduct a live hearing or a summary review
- Notice to respondent required
- Committee may defer a case because of pending civil or criminal matters



Grievance Committee Hearings

GRIEVANCE COMMITTEE HEARINGS

- **Types of Hearings**

- Summary Proceeding – limited to paper file
- Evidentiary Hearing – witnesses give testimony under oath
- Petition for Contempt and Order to Show Cause – used to compel information from a respondent

PRIOR TO CONDUCTING HEARINGS

- Bar Counsel and GC decide on rules to notice for hearing.
- Provide a copy of any written material to be considered by the committee to Bar Counsel.
- Respondent must be provided with ALL materials to be considered by the committee prior to hearing.
- Type of hearing to conduct is within the discretion of the GC.

DAY OF HEARING

- Quorum is required to conduct any hearing (3 members of the committee; 2 of whom must be lawyers).
- Voting – majority vote wins
- Vote is recorded



POST HEARING

- Investigating members may turn their files over to Bar Counsel.
- Bar Counsel will draft the appropriate paperwork for the case and notify the parties.
- Documents in the file become public record after the committee makes a disposition.
- Personal investigative notes are considered work product and are not public record.



Grievance Committee Options

GRIEVANCE COMMITTEE FINDINGS



- No Probable Cause (NPC)
- No Probable Cause with Letter of Advice (NPC/A)
- Recommend mediation or arbitration of a fee dispute
- Diversion
- Minor Misconduct (MM)
- Recommend deferral of review until conclusion of civil or criminal case against the accused
- Probable Cause (PC)

POSSIBLE SANCTIONS

- Disbarment
- Disbarment on Consent/Disciplinary Revocation
- Suspension
 - Non-Rehabilitative Suspension (90 days or less)
 - Rehabilitative Suspension (91 days to 3 years)
- Felony Suspension/Emergency Suspension
- Public Reprimand
- Probation
- Admonishment
- Diversion

DIVERSION ELIGIBILITY

- Respondent cannot have been subject of a prior diversion in the previous 7 years.
- Appropriate for cases that otherwise would be disposed of by a finding of minor misconduct or a finding of no probable cause with a letter of advice.

TYPES OF DIVERSION

- Ethics School
- Professionalism Workshop
- Trust Accounting Workshop
- Advertising Workshop
- Stress Management
- Florida Lawyers Assistance, Inc. (FLA)
- Law Office Management Services (LOMAS)
- Additional CLEs
- Grievance Mediation



Review & Trial

DESIGNATED REVIEWER

- The Board of Governors is the body that has authority and responsibility to govern The Florida Bar, subject to the direction and supervision of the Supreme Court of Florida.
- Designated Reviewers are attorneys elected to the Board of Governors by Bar Membership in each judicial circuit.



DESIGNATED REVIEWER CONT...

- Are assigned to oversee one or more grievance committee.
- Make recommendations to the Board of Governors on the appointment members to their assigned committees.
- Are copied on all actions of the grievance committee.
- Can seek Board of Governors review of the actions of the committee.
- Must approve consent judgments and the discipline sought by Bar Counsel at the trial stage.
- Must approve deferrals by Staff/GC for pending civil or criminal investigation.
- Make recommendations to the Board on whether to seek Florida Supreme Court review of recommendation by referees.



Board of Governors

BOARD OF GOVERNORS ROLE

- Reviews all decisions of a grievance committee referred by a designated reviewer
- Reviews consent judgments submitted before a complaint is filed
- Reviews all reports of referee not based on a consent judgment
- Reviews all petitions for disciplinary revocation

BOARD OF GOVERNORS ROLE con't...

- Reviews all cases involving requests for authority to act contrary to established board policy
- Drafts and reviews all proposed changes to the Rules Regulating The Florida Bar, and promulgates Board policies relating to discipline (Standing Board Policies)

SUPREME COURT OF FLORIDA

Pleadings filed directly with the Florida Supreme Court:

- **Bar Complaints**
- **Emergency Suspensions**
- **Contempt Proceedings**
- **Notices of Felony Conviction**



Trial Process

TRIAL PROCESS

- Bar Counsel files a formal complaint with the Supreme Court
- The Supreme Court refers the matter to the appropriate circuit, and the Chief Judge of the circuit appoints a county or circuit judge to act as Referee
- The appointed Referee:
 - conducts a proceeding pursuant to the Florida Rules of Civil Procedure
 - has 180 days in which to conclude the matter; 90 days in emergency suspensions
 - hears motions and presides over Final Hearings
 - holds Sanctions Hearing, if necessary
 - submits a Report to the Supreme Court with findings of guilt and recommendations as to discipline
 - Bar must prove all rule violations by clear and convincing evidence
- Supreme Court Reviews Report and issues Order
- Either the Respondent or the Bar can petition for review of the Report

APPEAL & SUPREME COURT ACTION

- **Petition for Review**

- May be filed by either the Bar or the Respondent
- The Board of Governors decides whether the Bar will seek review

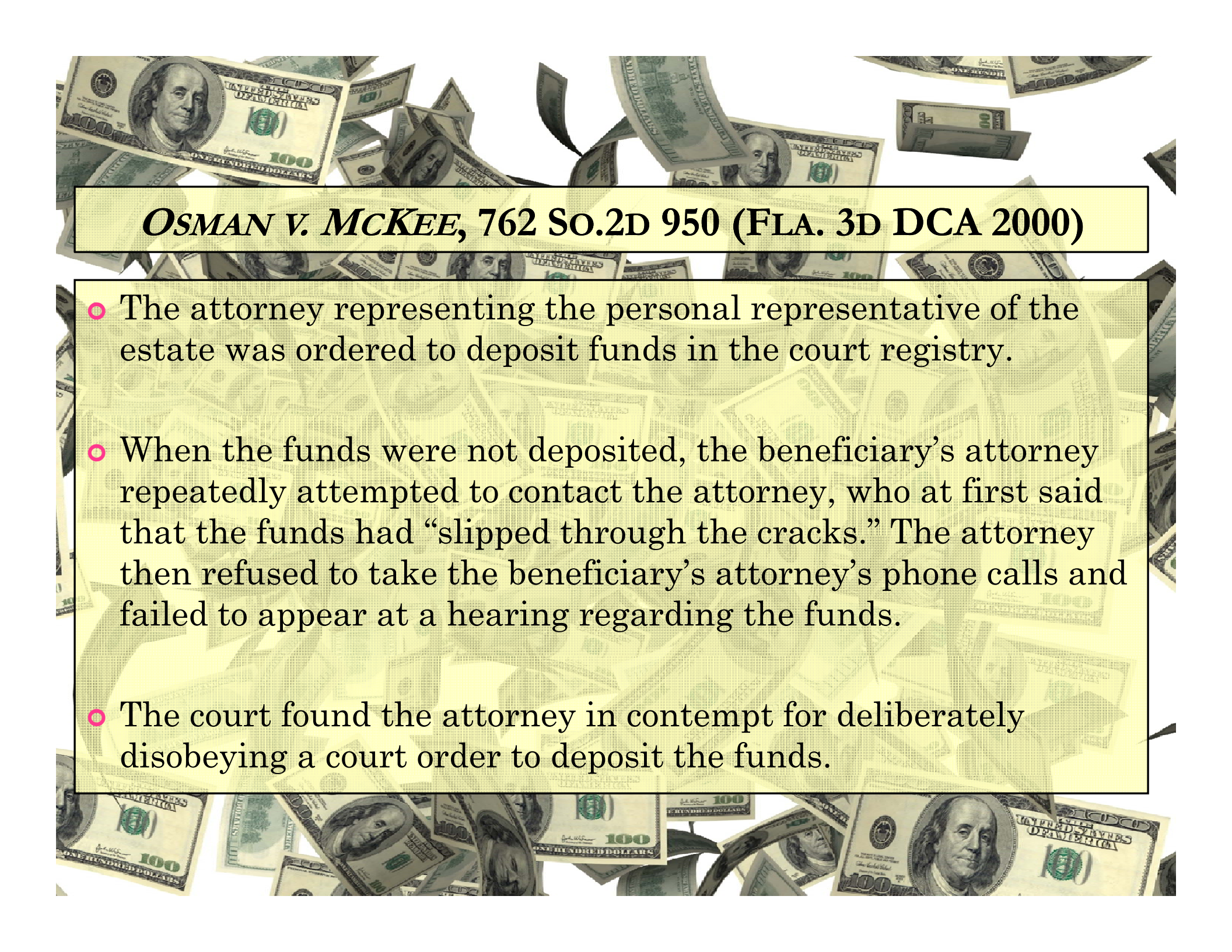
- **Burden on appeal**

- Court defers to referee on factual findings
- Court strictly scrutinizes discipline

BEDOYA V. AVENTURA, 861 F. SUPP. 2D 1346 (S.D. FLA. 2012)

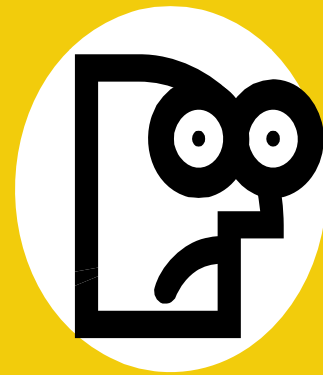
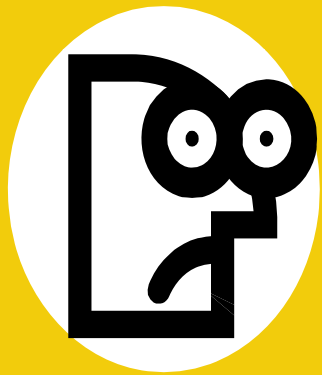
- The attorney sent numerous disparaging e-mails to opposing counsel, required that the deposition be held at Dunkin Donuts, played angry birds during the deposition, drew pictures of genitalia while comparing the drawings to opposing counsel during the deposition, and engaged in ex parte contact with a former employee and current independent contractor of the defendant corporation.
- The court granted the motion to disqualify the attorney and his entire law firm.



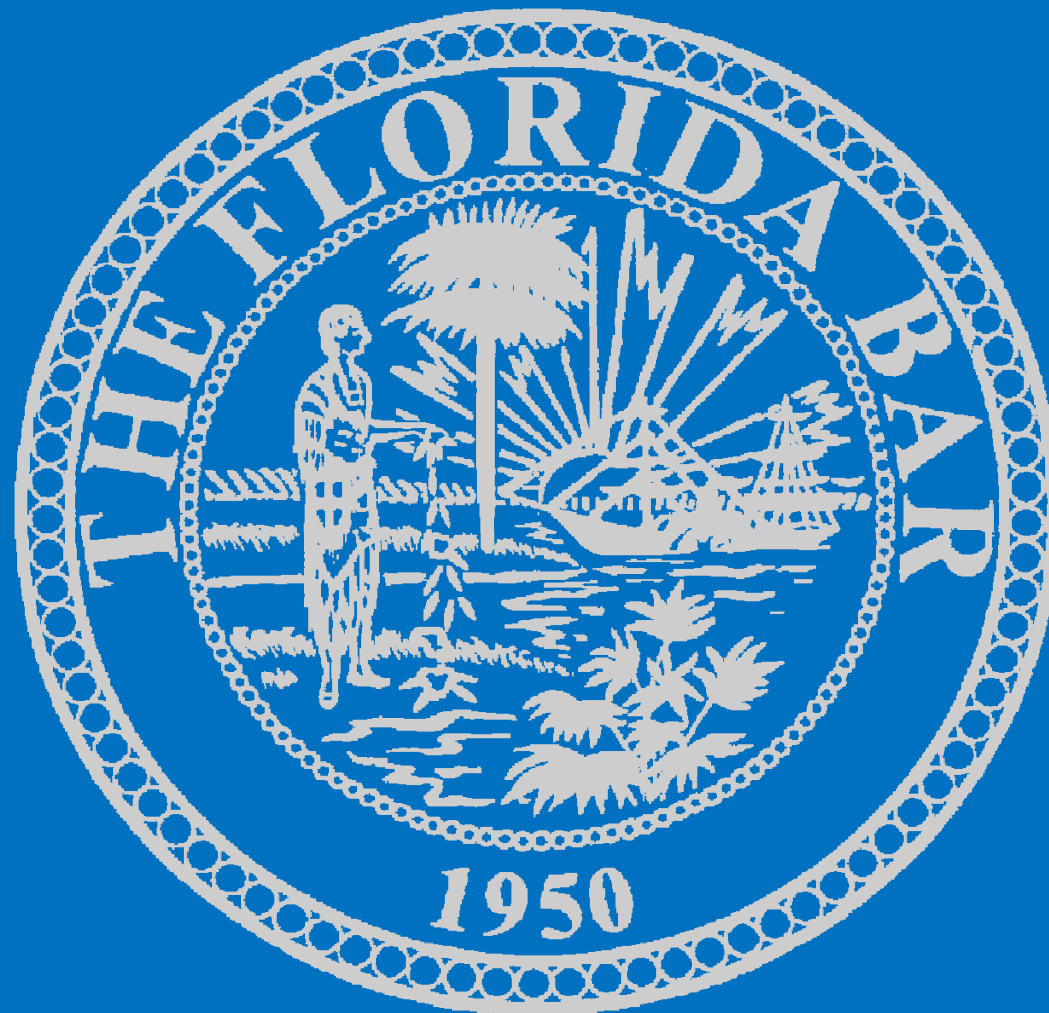
The background of the slide is a collage of numerous US dollar bills, primarily \$100 bills, scattered across the entire surface. The bills are shown in various orientations, some overlapping, creating a textured, financial-themed background.

OSMAN V. MCKEE, 762 So.2d 950 (FLA. 3d DCA 2000)

- The attorney representing the personal representative of the estate was ordered to deposit funds in the court registry.
- When the funds were not deposited, the beneficiary's attorney repeatedly attempted to contact the attorney, who at first said that the funds had "slipped through the cracks." The attorney then refused to take the beneficiary's attorney's phone calls and failed to appear at a hearing regarding the funds.
- The court found the attorney in contempt for deliberately disobeying a court order to deposit the funds.



It's QUESTION TIME!!



THE END