

RULES REGULATING THE FLORIDA BAR

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RULES REGULATING THE FLORIDA BAR

CHAPTER 1 GENERAL INTRODUCTION

The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

1-1. NAME

The name of the body regulated by these rules shall be THE FLORIDA BAR.

1-2. PURPOSE

The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.

1-3. MEMBERSHIP RULE 1-3.1 COMPOSITION

The membership of The Florida Bar shall be composed of all persons who are admitted by the Supreme Court of Florida to the practice of law in this state and who maintain their membership pursuant to these rules.

Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

(a) Members in Good Standing.

(1) Members of The Florida Bar in good standing means only those persons licensed to practice law in Florida who have paid annual membership fees for the current year and who are not retired, resigned, delinquent, on the inactive list for incapacity, or suspended.

(2) Members of The Florida Bar who have elected inactive status, who have paid annual membership fees for the current year, and who are not retired, resigned, delinquent, suspended, or on the inactive list for incapacity, are considered to be in good standing only for purposes of obtaining a certificate of good standing and for no other purpose. A certificate of good standing issued to an inactive member will reflect the member's inactive status.

(b) Conditionally Admitted Members. The Supreme Court of Florida may admit a person with a prior history of drug, alcohol, or psychological problems to membership in The Florida Bar and impose conditions of probation as the court deems appropriate on that member. The

period of probation will be no longer than 5 years, or for an indefinite period of time as the court deems appropriate by conditions in its order. The conditions may include, but not be limited to, participation in a rehabilitation program, periodic blood and urine analysis, periodic psychological examinations, or supervision by another member of The Florida Bar. The probation will be monitored by The Florida Bar and the costs paid by the member on probation. A failure to observe the conditions of probation or a finding of probable cause as to conduct of the member committed during the period of probation may terminate the probation and subject the member to all available disciplinary sanctions. Proceedings to determine compliance with conditions of admission will be processed in the same manner as matters of contempt provided elsewhere in these Rules Regulating The Florida Bar. If necessary, the court may assign a judicial referee to take testimony, receive evidence, and make findings of fact in the manner prescribed in the rule concerning procedures before a referee. The findings of the referee may be appealed as provided in the rule for procedures before the supreme court.

(c) Inactive Members. Inactive members of The Florida Bar means only those members who have properly elected to be classified as inactive in the manner elsewhere provided.

Inactive members will:

- (1) pay annual membership fees as set forth in rule 1-7.3;
- (2) be exempt from continuing legal education requirements;
- (3) affirmatively represent their membership status as inactive members of The Florida Bar when any statement of Florida Bar membership is made;
- (4) not hold themselves out as being able to practice law in Florida or render advice on matters of Florida law unless certified as an emeritus lawyer under chapter 12 of these rules;
- (5) not hold any position that requires the person to be a licensed Florida lawyer;
- (6) not be eligible for certification under the Florida certification plan;
- (7) not vote in Florida Bar elections or be counted for purposes of apportionment of the board of governors;
- (8) certify on election of inactive status that they will comply with all applicable restrictions and limitations imposed on inactive members of The Florida Bar, unless certified as an emeritus lawyer under chapter 12 of these rules.

Failure of an inactive member to comply with all these requirements is cause for disciplinary action.

An inactive member may, at any time, apply for reinstatement to active membership in good standing to become eligible to practice law in Florida in the manner provided in rule 1-3.7.

Amended Dec. 4, 1986 (498 So.2d 914); March 30, 1989, effective March 31, 1989 (541 So.2d 110); Nov. 29, 1990, effective Jan. 1, 1991 (570 So.2d 940); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17,

1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 1-3.3 OFFICIAL BAR NAME AND CONTACT INFORMATION

(a) Designation. Each member of The Florida Bar must designate an official bar name, mailing address, business telephone number, and business e-mail address. If the physical location or street address is not the principal place of employment, the member must also provide an address for the principal place of employment. The Florida Bar may excuse a bar member from the requirement of providing an e-mail address if the bar member has been excused by the court from e-service or the bar member demonstrates that the bar member has no e-mail account and lacks Internet service at the bar member's office.

(b) Changes. Each member must promptly notify the executive director of any changes in any information required by this rule. The official bar name of each member of The Florida Bar must be used in the course of the member's practice of law. Members may change their official bar name by sending a request to the Supreme Court of Florida. The court must approve all official bar name changes.

Amended Oct. 20, 1994 (644 So.2d 282). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015.

RULE 1-3.4 CLER DELINQUENT MEMBERS AND CLER EXEMPT MEMBERS

(a) CLER Delinquent Members. Any member who is suspended by reason of failure to complete continuing legal education requirements shall be deemed a delinquent member. A delinquent member shall not engage in the practice of law in this state and shall not be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing. Any member suspended for failure to complete continuing legal education requirements may be reinstated as elsewhere provided in these rules.

(b) CLER Exempt Members. Any member who is exempt from continuing legal education requirements (see rule 6-10.3(c)) shall not engage in the practice of law in this state; provided, however, that a member exempt from continuing legal education requirements by reason of active military service may practice law in Florida if required to do so as a part of assigned military duties.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-3.5 RETIREMENT

Any member of The Florida Bar may retire from The Florida Bar upon petition or other written request to, and approval of, the executive director. A retired member shall not practice law in this state except upon petition for reinstatement to, and approval of, the executive director; the payment of all membership fees, costs, or other amounts owed to The Florida Bar; and the

completion of all outstanding continuing legal education or basic skills course requirements. A member who seeks and is approved to permanently retire shall not be eligible for reinstatement or readmission. A retired member shall be entitled to receive such other privileges as the board of governors may authorize.

A retired member shall remain subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness to resume the practice of law in Florida as elsewhere stated in these Rules Regulating The Florida Bar.

If the executive director is in doubt as to disposition of a petition, the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for retirement or reinstatement from retirement may be reviewed upon petition to the Supreme Court of Florida.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); Oct. 6, 2005, effective Jan. 1, 2006 (916 So.2d 655). Amended April 12, 2012, effective July 1, 2012 (SC10-1967)

RULE 1-3.6 DELINQUENT MEMBERS

Any person now or hereafter licensed to practice law in Florida shall be deemed a delinquent member if the member:

- (a) fails to pay membership fees;
- (b) fails to comply with continuing legal education or basic skills course requirements;
- (c) fails to pay the costs assessed in diversion or disciplinary cases within 30 days after the disciplinary decision or diversion recommendation becomes final, unless such time is extended by the board of governors for good cause shown;
- (d) fails to make restitution imposed in diversion cases or disciplinary proceedings within the time specified in the order in such cases or proceedings;
- (e) fails to pay fees imposed as part of diversion for more than 30 days after the diversion recommendation became final, unless such time is extended by the board of governors for good cause shown; or
- (f) fails to pay an award entered in fee arbitration proceedings conducted under the authority stated elsewhere in these rules and 30 days or more have elapsed since the date on which the award became final.

Delinquent members shall not engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (875 So.2d 448); Oct. 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); amended Nov. 19, 2009 (SC08-1890) (34 Fla.L.Weekly S628a), effective February 1, 2010. Amended April 12, 2012, effective July 1, 2012 (SC10-1967)

RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP

(a) Eligibility for Reinstatement. Members who have retired or been delinquent for a period of time not in excess of 5 years are eligible for reinstatement under this rule. Time will be calculated from the day of the retirement or delinquency.

Inactive members may also seek reinstatement under this rule.

(b) Petitions Required. A member seeking reinstatement must file a petition with the executive director setting forth the reason for inactive status, retirement, or delinquency and showing good cause why the petition for reinstatement should be granted. The petitioner must include all required information on a form approved by the board of governors. The petition must be accompanied by a nonrefundable reinstatement fee of \$150 and payment of all arrearages unless adjusted by the executive director with concurrence of the executive committee for good cause shown. Inactive members are not required to pay the reinstatement fee. No member will be reinstated if, from the petition or from investigation conducted, the petitioner is not of good moral character and morally fit to practice law or if the member is delinquent with the continuing legal education or basic skills course requirements.

If the executive director is in doubt as to approval of a petition, the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for reinstatement may be reviewed on petition to the Supreme Court of Florida.

(c) Members Who Have Retired or Been Delinquent for Less Than 5 Years, But More Than 3 Years. Members who have retired or been delinquent for less than 5 years, but more than 3 years, must complete 11 hours of continuing legal education courses for each year or portion of a year that the member had retired or was deemed delinquent.

(d) Members Who Have Retired or Been Delinquent for 5 Years or More. Members who have retired or have been deemed delinquent for a period of 5 years or longer will not be reinstated under this rule and must be readmitted upon application to the Florida Board of Bar Examiners and approval by the Supreme Court of Florida.

(e) Members Who Have Permanently Retired. Members who have permanently retired will not be reinstated under this rule.

(f) Members Delinquent 60 Days or Less. Reinstatement from delinquency for payment of membership fees or completion of continuing legal education or basic skills course requirements approved within 60 days from the date of delinquency is effective on the last business day before the delinquency. Any member reinstated within the 60-day period is not subject to disciplinary sanction for practicing law in Florida during that time.

(g) Inactive Members. Inactive members may be reinstated to active membership in good standing to become eligible to practice law in Florida by petition filed with the executive director, in the form and as provided in (b) above, except:

(1) If the member has been inactive for greater than 5 years, has been authorized to practice law in another jurisdiction, and either actively practiced law in that jurisdiction or held a position that requires a license as a lawyer for the entire period of time, the member will be required to complete the Florida Law Update continuing legal education course as part of continuing legal education requirements.

(2) If the member has been inactive for greater than 5 years and does not meet the requirements of subdivision (1), the member will be required to complete the basic skills course requirement and the 33-hour continuing legal education requirement.

(3) An inactive member is not eligible for reinstatement until all applicable continuing legal education requirements have been completed and the remaining portion of membership fees for members in good standing for the current fiscal year have been paid.

Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); amended Nov. 19, 2009 (SC08-1890) (34 Fla.L.Weekly S628a), effective February 1, 2010; amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended June 11, 2015, effective October 1, 2015 (SC14-2088), amended November 9, 2017, effective February 1, 2018 (SC16-1962); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 1-3.8 RIGHT TO INVENTORY

(a) Appointment; Grounds; Authority. Whenever an attorney is suspended, disbarred, becomes a delinquent member, abandons a practice, disappears, dies, or suffers an involuntary leave of absence due to military service, catastrophic illness, or injury, and no partner, personal representative, or other responsible party capable of conducting the attorney's affairs is known to exist, the appropriate circuit court, upon proper proof of the fact, may appoint an attorney or attorneys to inventory the files of the subject attorney (hereinafter referred to as "the subject attorney") and to take such action as seems indicated to protect the interests of clients of the subject attorney.

(b) Maintenance of Attorney-Client Confidences. Any attorney so appointed shall not disclose any information contained in files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of the court that appointed the attorney to make the inventory.

(c) Status and Purpose of Inventory Attorney. Nothing herein creates an attorney and client, fiduciary, or other relationship between the inventory attorney and the subject attorney. The purpose of appointing an inventory attorney is to avoid prejudice to clients of the subject attorney and, as a secondary result, prevent or reduce claims against the subject attorney for such prejudice as may otherwise occur.

(d) Rules of Procedure. The Florida Rules of Civil Procedure are applicable to proceedings under this rule.

(e) Designation of Inventory Attorney. Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this rule; provided, however, that no designation is required with respect to any portion of the member's practice as an employee of a governmental entity. When the services of an inventory attorney become necessary, an authorized representative of The Florida Bar shall contact the designated member and determine the member's current willingness to serve. The designated member shall not be under any obligation to serve as inventory attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (875 So.2d 448); Oct. 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); amended Nov. 19, 2009 (SC08-1890) (34 Fla.L.Weekly S628a), effective February 1, 2010.

RULE 1-3.9 LAW FACULTY AFFILIATES

Full-time faculty members in the employment of law schools in Florida approved by the American Bar Association who are admitted to practice and who are in good standing before a court of any state may become "law faculty affiliates" of The Florida Bar. Law faculty affiliates may participate in such activities of The Florida Bar as may be authorized by the board of governors, but shall not be entitled to engage in the practice of law, appear as attorneys before the courts of the state, or hold themselves out as possessing such entitlements.

No history provided as of 2009.

RULE 1-3.10 APPEARANCE BY NON-FLORIDA LAWYER IN A FLORIDA COURT

(a) Non-Florida Lawyer Appearing in a Florida Court. A practicing lawyer of another state, in good standing and currently eligible to practice, may, upon association of a member of The Florida Bar and verified motion, be permitted to practice upon such conditions as the court deems appropriate under the circumstances of the case. Such lawyer shall comply with the applicable portions of this rule and the Florida Rules of Judicial Administration.

(1) *Application of Rules Regulating The Florida Bar.* Lawyers permitted to appear by this rule shall be subject to these Rules Regulating The Florida Bar while engaged in the permitted representation.

(2) *General Practice Prohibited.* Non-Florida lawyers shall not be permitted to engage in a general practice before Florida courts. For purposes of this rule more than 3 appearances within a 365-day period in separate representations shall be presumed to be a "general practice."

(3) *Effect of Professional Discipline or Contempt.* Non-Florida lawyers who have been disciplined or held in contempt by reason of misconduct committed while engaged in representation that is permitted by this rule shall thereafter be denied admission under this rule and the applicable provisions of the Florida Rules of Judicial Administration.

(b) Lawyer Prohibited From Appearing. No lawyer is authorized to appear pursuant to this rule or the applicable portions of the Florida Rules of Judicial Administration if the lawyer:

- (1) is disbarred or suspended from practice in any jurisdiction;
- (2) is a Florida resident, unless the attorney has an application pending for admission to The Florida Bar and has not previously been denied admission to The Florida Bar;
- (3) is a member of The Florida Bar but ineligible to practice law;
- (4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;
- (5) has failed to provide notice to The Florida Bar or pay the filing fee as required by this rule; or
- (6) is engaged in a “general practice” as defined elsewhere in this rule.

(c) Content of Verified Motion for Leave to Appear. Any verified motion filed under this rule or the applicable provisions of the Florida Rules of Judicial Administration shall include:

- (1) a statement identifying all jurisdictions in which the lawyer is currently eligible to practice law;
- (2) a statement identifying by date, case name, and case number all other matters in Florida state courts in which pro hac vice admission has been sought in the preceding 5 years, and whether such admission was granted or denied;
- (3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or all jurisdictions in which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation, as appropriate;
- (4) a statement identifying the date on which the legal representation at issue commenced and the party or parties represented;
- (5) a statement that all applicable provisions of this rule and the applicable provisions of the Florida Rules of Judicial Administration have been read and that the verified motion complies with those rules;
- (6) the name, record bar address, and membership status of the Florida Bar member or members associated for purposes of the representation;
- (7) a certificate indicating service of the verified motion upon all counsel of record in the matter in which leave to appear pro hac vice is sought and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable \$250 filing fee made payable to The Florida Bar or notice of the waiver of the fee; and

(8) a verification by the lawyer seeking to appear pursuant to this rule or the applicable provisions of the Florida Rules of Judicial Administration and the signature of the Florida Bar member or members associated for purposes of the representation.

Comment

Subdivision (a)(2) defines and prohibits the general practice before Florida courts by non-Florida lawyers. For purposes of this rule, an “appearance” means the initial or first appearance by that non-Florida lawyer in a case pending in a Florida court, and includes appearing in person or by telephone in court or filing a pleading, motion or other document with the court. A non-Florida lawyer making an appearance in a Florida court is required to comply with rule 2.510 of the Florida Rules of Judicial Administration.

This rule does not prohibit a non-Florida lawyer from participating in more than 3 cases during any 365-day period; instead, it prohibits a non-Florida lawyer from making an initial or first appearance in more than 3 cases during any 365-day period.

Example: The following example illustrates the application of this rule to a non-Florida lawyer’s appearances. Assume for this example that a lawyer licensed to practice in Georgia only has been admitted pro hac vice pursuant to Fla. R. Jud. Admin. 2.510 in 3 separate Florida cases on the following dates: January 10, 2008; February 3, 2008; and February 20, 2008.

(1) In this example, the lawyer would be prohibited from seeking to appear pro hac vice under Fla. R. Jud. Admin. 2.510 in another separate representation until the expiration of the 365-day period from his or her oldest of the 3 appearances (i.e., until January 10, 2009).

(2) In this example, the lawyer would be permitted under this rule to seek to appear pro hac vice in a new case on January 10, 2009 even if the 3 cases in which he or she made an appearance are still active.

(3) In this example, the lawyer could seek to appear pro hac vice in yet another new case on February 3, 2009. The fact that the lawyer’s cases in which he or she appeared on January 10, 2008, February 3, 2008, February 20, 2008, and January 1, 2009 are still active would not prohibit that lawyer from seeking to appear in the new case on February 3, 2009, because, as of that date, the lawyer would have only made an initial appearance in 2 prior cases within that preceding 365-day period (i.e., on February 20, 2008 and January 1, 2009). Thus, under this rule, a non-Florida lawyer could have pending more than 3 cases for which he or she has appeared at any given time, as the restriction on general practice relates to the making of an initial appearance within a 365-day period and not to whether any such case is still active following the expiration of 365 days.

(4) Similarly, in the above example, if the non-Florida lawyer’s 3 cases are all resolved by April 1, 2008, that lawyer would still be prohibited from seeking to make a new appearance until the expiration of the oldest of the 3 prior appearances (i.e., until January 10, 2009).

The purpose of this comment is to explain what constitutes an “appearance” under this rule and how to calculate the number of appearances in any 365-day period. This comment and the rule itself do not require a Florida court to grant any specific request to appear under Fla. R. Jud. Admin. 2.510 if the non-Florida lawyer meets the requirements of subdivision (a)(2). In all such cases, the decision of whether a non-Florida lawyer may appear in a case under Fla. R. Jud. Admin. 2.510 is within the discretion of the court.

This rule is not applicable to appearances in federal courts sitting in Florida, as appearances before each of those courts are regulated by the rules applicable to those courts. Further, an appearance in a federal court sitting in Florida does not constitute an “appearance” as contemplated by subdivision (a)(2), because subdivision (a)(2) applies only to appearances before Florida state courts.

Amended Feb. 8, 2001 (795 So.2d 1); May 12, 2005, effective Jan. 1, 2006 (907 So.2d 1138) (SC04-135) ; amended Nov. 19, 2009 (SC08-1890) (34 Fla.L.Weekly S628a), effective February 1, 2010. Amended April 12, 2012, effective July 1, 2012 (SC10-1967)

RULE 1-3.11 APPEARANCE BY NON-FLORIDA LAWYER IN AN ARBITRATION PROCEEDING IN FLORIDA

(a) Non-Florida Lawyer Appearing in an Arbitration Proceeding in Florida. A lawyer currently eligible to practice law in another United States jurisdiction or a non-United States jurisdiction may appear in an arbitration proceeding in this jurisdiction if the appearance is:

- (1) for a client who resides in or has an office in the lawyer’s home state; or
- (2) where the appearance arises out of or is reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice; and
- (3) the appearance is not one that requires pro hac vice admission.

Such lawyer shall comply with the applicable portions of this rule and of rule 4-5.5.

(b) Lawyer Prohibited from Appearing. No lawyer is authorized to appear pursuant to this rule if the lawyer:

- (1) is disbarred or suspended from practice in any jurisdiction;
- (2) is a Florida resident;
- (3) is a member of The Florida Bar but ineligible to practice law;
- (4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;
- (5) has failed to provide notice to The Florida Bar or pay the filing fee as required by this rule, except that neither notice to The Florida Bar nor a fee shall be required for lawyers appearing in international arbitrations; or

(6) is engaged in a “general practice” as defined elsewhere in these rules.

(c) Application of Rules Regulating the Florida Bar. Lawyers permitted to appear by this rule shall be subject to these Rules Regulating the Florida Bar while engaged in the permitted representation, including, without limitation, rule 4-5.5.

(d) General Practice Prohibited. Non-Florida lawyers shall not be permitted to engage in a general practice pursuant to this rule. In all arbitration matters except international arbitration, a lawyer who is not admitted to practice law in this jurisdiction who files more than 3 demands for arbitration or responses to arbitration in separate arbitration proceedings in a 365-day period shall be presumed to be engaged in a “general practice.”

(e) Content of Verified Statement for Leave to Appear. In all arbitration proceedings except international arbitrations, prior to practicing pursuant to this rule, the non-Florida lawyer shall file a verified statement with The Florida Bar and serve a copy of the verified statement on opposing counsel, if known. If opposing counsel is not known at the time the verified statement is filed with The Florida Bar, the non-Florida lawyer shall serve a copy of the verified statement on opposing counsel within 10 days of learning the identity of opposing counsel. The verified statement shall include:

(1) a statement identifying all jurisdictions in which the lawyer is currently eligible to practice law including the attorney’s bar number(s) or attorney number(s);

(2) a statement identifying by date, case name, and case number all other arbitration proceedings in which the non-Florida lawyer has appeared in Florida in the preceding 5 years; however, if the case name and case number are confidential pursuant to an order, rule, or agreement of the parties, this information does not need to be provided and only the dates of prior proceedings must be disclosed;

(3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or in which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation, as appropriate;

(4) a statement identifying the date on which the legal representation at issue commenced and the party or parties represented; however, if the name of the party or parties is confidential pursuant to an order, rule, or agreement of the parties, this information does not need to be provided and only the date on which the representation commenced must be disclosed;

(5) a statement that all applicable provisions of this rule have been read and that the verified statement complies with this rule;

(6) a certificate indicating service of the verified statement upon all counsel of record in the matter and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable \$250.00 filing fee made payable to The Florida Bar; however, such fee may be waived in cases involving indigent clients; and

(7) a verification by the lawyer seeking to appear pursuant to this rule.

Comment

This rule applies to arbitration proceedings held in Florida where 1 or both parties are being represented by a lawyer admitted in another United States jurisdiction or a non-United States jurisdiction. For the most part, the rule applies to any type of arbitration proceeding and any matter being arbitrated. However, entire portions of subdivision (d) and subdivision (e) do not apply to international arbitrations. For the purposes of this rule, an international arbitration is defined as the arbitration of disputes between 2 or more persons at least 1 of whom is a nonresident of the United States or between 2 or more persons all of whom are residents of the United States if the dispute (1) involves property located outside the United States, (2) relates to a contract or other agreement which envisages performance or enforcement in whole or in part outside the United States, (3) involves an investment outside the United States or the ownership, management, or operation of a business entity through which such an investment is effected or any agreement pertaining to any interest in such an entity, (4) bears some other relation to 1 or more foreign countries, or (5) involves 2 or more persons at least 1 of whom is a foreign state as defined in 28 U.S.C. §1603. International arbitration does not include the arbitration of any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in Florida or any dispute involving domestic relations.

The exceptions provided in this rule for international arbitrations in no way exempt lawyers not admitted to The Florida Bar and appearing in Florida courts from compliance with the provisions of rule 1-3.10 and any applicable rules of judicial administration, regardless of whether the court proceeding arises out of or is related to the subject of a dispute in an international arbitration. For example, a lawyer not a member of The Florida Bar could not appear in a Florida court or confirm or vacate an award resulting from an international arbitration without being authorized to appear pro hac vice and without complying with all requirements contained in rule 1-3.10 and the applicable rules of judicial administration.

Added May 12, 2005, effective Jan. 1, 2006 (907 So.2d 1138); Amended Sept. 11, 2008, effective Jan. 1, 2009 (991 So.2d 842) (SC04-135).

1-4. BOARD OF GOVERNORS

RULE 1-4.1 COMPOSITION OF BOARD OF GOVERNORS

The board of governors shall be the governing body of The Florida Bar. It shall have 52 members, 51 of whom shall be voting members, and shall consist of the president and the president-elect of The Florida Bar, president and president-elect (who shall vote only in the absence of the president) of the young lawyers division, representatives elected by and from the members of The Florida Bar in good standing, and 2 residents of the state of Florida who are not members of The Florida Bar. There shall be at least 1 representative from each judicial circuit and at least 1 representative from among the members in good standing residing outside of the state of Florida, all of whom shall be apportioned among and elected from the judicial circuits and the nonresident membership, on the basis of the number of members in good standing residing in each circuit and outside of the state. The formula for determining the number of representatives apportioned to and elected from each judicial circuit and the nonresident

membership, and all other matters concerning election and term of office for members of the board of governors, shall be prescribed in chapter 2.

Amended Dec. 10, 1987, effective Jan. 1, 1988 (518 So.2d 251); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 1-4.2 AUTHORITY; SUPERVISION

(a) Authority and Responsibility. The board of governors shall have the authority and responsibility to govern and administer The Florida Bar and to take such action as it may consider necessary to accomplish the purposes of The Florida Bar, subject always to the direction and supervision of the Supreme Court of Florida.

(b) Duty to Furnish Information to Court. The board of governors shall furnish to each member of the Supreme Court of Florida the following:

(1) The minutes of each meeting of the board of governors of The Florida Bar and each meeting of its executive committee except when acting in a prosecutorial role in a disciplinary or unlicensed practice of law matter.

(2) Any written report of any section, committee, or division of The Florida Bar submitted to the board of governors that is either accepted or adopted by the board.

(3) All rules, policies, or procedures adopted by the board of governors under the authority granted to the board by the court.

(4) Such additional information and material as may be requested by any member of the court.

(c) Powers of Court. The Supreme Court of Florida may at any time ratify or amend action taken by the board of governors under these rules, order that actions previously taken be rescinded, or otherwise direct the actions and activities of The Florida Bar and its board of governors.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-4.3 COMMITTEES

The board of governors will create an executive committee composed of the president, president-elect, chairs of the budget, communications, disciplinary review, program evaluation and legislation committees, president of the young lawyers division, 2 members of the board appointed by the president, and 3 members of the board elected by the board to act on matters that arise and require disposition between meetings of the board; a budget committee composed of 9 members with 3-year staggered terms; grievance committees as provided for in chapter 3; unlicensed practice of law committees as provided for in chapter 10; and a professional ethics committee.

Amended May 12, 1988 (525 So.2d 868); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); amended November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010; amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 1-4.4 BOARD COMMITTEES

The board may create and abolish additional committees as it may consider necessary to accomplish the purposes of The Florida Bar.

RULE 1-4.5 SECTIONS

The board of governors may create and abolish sections as it may consider necessary or desirable to accomplish the purposes and serve the interests of The Florida Bar and of the sections and shall prescribe the powers and duties of such sections. The bylaws of any section shall be subject to approval of the board of governors.

1-5. OFFICERS

RULE 1-5.1 OFFICERS

The officers of The Florida Bar shall be a president, a president-elect, and an executive director.

RULE 1-5.2 DUTIES

Chapter 2 shall prescribe the duties, terms of office, qualifications, and manner of election or selection of officers of The Florida Bar.

1-6. MEETINGS OF THE FLORIDA BAR

RULE 1-6.1 ANNUAL MEETING

An annual meeting of The Florida Bar shall be held each fiscal year at such time as may be designated by the board of governors.

RULE 1-6.2 SPECIAL MEETINGS

Special meetings of The Florida Bar may be held at such times and places as may be determined by the board of governors or upon petition of 5 percent of the membership of The Florida Bar.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252)

RULE 1-6.3 NOTICE; RULES OF PROCEDURE

The manner of notice and rules of procedure for all meetings of The Florida Bar shall be prescribed in chapter 2.

1-7. MEMBERSHIP FEES AND FISCAL CONTROL

RULE 1-7.1 BUDGET

The board of governors shall adopt a proposed budget for The Florida Bar in advance of each fiscal year, publish such proposed budget in a publication of The Florida Bar generally circulated to members, and thereafter adopt a budget for the succeeding fiscal year. The budget adopted by the board of governors shall be filed with the Supreme Court of Florida 30 days prior to the beginning of each fiscal year and shall be deemed approved and become the budget of The Florida Bar unless rejected by the Supreme Court of Florida within said 30-day period or until amended by the board of governors in accordance with rule 2-6.12.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252)

RULE 1-7.2 OFFICERS' SALARY

No member of the board of governors and no officer of The Florida Bar other than the executive director shall receive a fee or salary from The Florida Bar.

RULE 1-7.3 MEMBERSHIP FEES

(a) Membership Fees Requirement. On or before July 1 of each year, every member of The Florida Bar, except those members who have retired, resigned, been disbarred, or been classified as inactive members pursuant to rule 3-7.13, must pay annual membership fees to The Florida Bar in the amount of \$265 per annum. Every member of The Florida Bar must pay the membership fee and concurrently file a fee statement with any information the board of governors requires.

(b) Prorated Membership Fees. Membership fees will be prorated for anyone admitted to The Florida Bar after July 1 of any fiscal year. The prorated amount will be based on the number of full calendar months remaining in the fiscal year at the time of their admission.

Unpaid prorated membership fees will be added to the next annual membership fees bill with no penalty to the member. The Florida Bar must receive the combined prorated and annual membership fees payment on or before August 15 of the first full year fees are due unless the member elects to pay by installment.

(c) Installment Payment of Membership Fees. Members of The Florida Bar may elect to pay annual membership fees in 3 equal installments as follows:

(1) in the second and third year of their admission to The Florida Bar;

(2) if the member is employed by a federal, state, or local government in a non-elected position that requires the individual to maintain membership in good standing within The Florida Bar; or

(3) if the member is experiencing an undue hardship.

A member must notify The Florida Bar of the intention to pay membership fees in installments. The first installment payment must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and/or third installment payments postmarked after their respective due date(s) are subject to a one-time late charge of \$50. The late charge must accompany the final payment. The executive director with concurrence of the executive committee may adjust the late charge.

The executive director will send written notice to the last official bar address of each member who has not paid membership fees and late fees by February 1. Written notice may be by registered or certified mail, or by return receipt electronic mail. The member will be a delinquent member if membership fees and late charges are not paid by March 15. The executive director with concurrence of the executive committee may adjust these fees or due date for good cause.

Each member who elects to pay annual membership fees in installments may be charged an additional administrative fee set by the board of governors to defray the costs of this activity.

(d) Election of Inactive Membership. A member in good standing may elect to be classified as an inactive member. This election must be indicated on the annual membership fees statement and received by The Florida Bar by August 15. If the annual membership fees statement is received after August 15, the member's right to inactive status is waived until the next fiscal year. Inactive classification will continue from fiscal year to fiscal year until the member is reinstated as a member in good standing who is eligible to practice law in Florida. The election of inactive status is subject to the restrictions and limitations provided elsewhere in these rules.

Membership fees for inactive members are \$175 per annum.

(e) Late Payment of Membership Fees. Payment of annual membership fees must be postmarked no later than August 15. Membership fees payments postmarked after August 15 must be accompanied by a late charge of \$50. The executive director will send written notice to the last official bar address of each member whose membership fees have not been paid by August 15. Written notice may be by registered or certified mail, or by return receipt electronic mail. The member is considered a delinquent member upon failure to pay membership fees and any late charges by September 30, unless adjusted by the executive director with concurrence of the executive committee.

(f) Membership Fees Exemption for Activated Reserve Members of the Armed Services. Members of The Florida Bar engaged in reserve military service in the Armed Forces of the United States who are called to active duty for 30 days or more during the bar's fiscal year are exempt from the payment of membership fees. The Armed Forces of the United States includes the United States Army, Air Force, Navy, Marine Corps, Coast Guard, as well as the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. Requests for an exemption must be made within 15 days before the date that membership fees are due each

year or within 15 days of activation to duty of a reserve member. To the extent membership fees were paid despite qualifying for this exemption, such membership fee will be reimbursed by The Florida Bar within 30 days of receipt of a member's request for exemption. Within 30 days of leaving active duty status, the member must report to The Florida Bar that he or she is no longer on active duty status in the United States Armed Forces.

Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); June 8, 1989 (544 So.2d 193); June 14, 1990 (562 So.2d 343); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 17, 1994 (632 So.2d 597); June 27, 1996, effective July 1, 1996 (677 So.2d 272); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); June 4, 2001 (797 So.2d 550); May 20, 2004 (875 So.2d 448) (SC03-705), October 6, 2005, effective January 1, 2006; (SC05206) (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 1-7.4 PROCEDURES

Other matters relating to the budget and fiscal control shall be governed by chapter 2.

RULE 1-7.5 RETIRED, INACTIVE, DELINQUENT MEMBERS

A member who is retired, inactive, or delinquent is prohibited from practicing law in this state until reinstated as provided in these rules, except retired or inactive members who are certified as emeritus lawyers under chapter 12 of these rules.

Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended November 19, effective February 1, 2010 (2009 SC08-1890)(34 Fla.L.Weekly S628a); amended November 9, 2017, effective February 1, 2018 (SC16-1961).

1-8. PROGRAMS AND FUNCTIONS

RULE 1-8.1 RESPONSIBILITY OF BOARD OF GOVERNORS

Among its other duties, the board of governors is charged with the responsibility of enforcing the Rules of Discipline and the Rules of Professional Conduct.

RULE 1-8.2 UNLICENSED PRACTICE OF LAW

The board of governors shall act as an arm of the Supreme Court of Florida for the purpose of seeking to prohibit the unlicensed practice of law by investigating, prosecuting, and reporting to this court and to appropriate authorities incidents involving the unlicensed practice of law in accordance with chapter 10.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-8.3 BOARD OF LEGAL SPECIALIZATION AND EDUCATION

The board of governors shall establish the board of legal specialization and education to function as a central administrative board to oversee specialization regulation in Florida in accordance with chapter 6.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-8.4 CLIENTS' SECURITY FUND

The board of governors may provide monetary relief to persons who suffer reimbursable losses as a result of misappropriation, embezzlement, or other wrongful taking or conversion of money or other property in accordance with chapter 7.

Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

1-9. YOUNG LAWYERS DIVISION

RULE 1-9.1 CREATION

There shall be a division of The Florida Bar known as the Young Lawyers Division composed of all members in good standing under the age of 36 and all members in good standing who have not been admitted to the practice of law in any jurisdiction for more than 5 years.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-9.2 POWERS AND DUTIES

The division shall have such powers and duties as shall be prescribed by the board of governors of The Florida Bar.

RULE 1-9.3 BYLAWS

The bylaws of the division shall be subject to approval of the board of governors.

1-10. RULES OF PROFESSIONAL CONDUCT

RULE 1-10.1 COMPLIANCE

All members of The Florida Bar shall comply with the terms and the intent of the Rules of Professional Conduct as established and amended by this court.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

1-11. BYLAWS
RULE 1-11.1 GENERALLY

Bylaws, contained in chapter 2, not inconsistent with these rules shall govern the method and manner by which the requirements of these Rules Regulating The Florida Bar are met.

RULE 1-11.2 NOTICE OF AMENDMENT

Notice of consideration of proposed amendments to chapter 2 by the board of governors of The Florida Bar shall be given to the members of The Florida Bar. Amendments to chapter 2 adopted by the board of governors shall become effective 50 days after the amendment and proof of the prescribed publication are filed with the Supreme Court of Florida unless a later effective date is provided for by the board of governors or unless otherwise ordered by the court. The court will consider objections to amendments to chapter 2 adopted by the board of governors that are filed with the court before the effective date of the amendment.

Former Rule 1-11.3. Renumbered and amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 1-11.3 SUPERVISION BY COURT

This court may at any time amend chapter 2 or modify amendments to chapter 2 adopted by the board of governors or order that amendments to chapter 2 not become effective or become effective at some date other than provided for in this rule.

Former Rule 1-11.4. Renumbered and amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

1-12. AMENDMENTS

**RULE 1-12.1 AMENDMENT TO RULES; AUTHORITY; NOTICE; PROCEDURES;
COMMENTS**

(a) Authority to Amend. The Board of Governors of The Florida Bar has the authority to amend chapters 7 and 9, as well as standards for the individual areas of certification within chapter 6 of these Rules Regulating The Florida Bar, consistent with the notice, publication, and comments requirements provided below. Only the Supreme Court of Florida has the authority to amend all other chapters of these Rules Regulating The Florida Bar.

(b) Proposed Amendments. Any member of The Florida Bar in good standing or a section or committee of The Florida Bar may request the board of governors to consider an amendment to these Rules Regulating The Florida Bar.

(c) Board Review of Proposed Amendments. The board of governors will review proposed amendments by referral of the proposal to an appropriate board committee for substantive review. After substantive review, an appropriate committee of the board will review the proposal for consistency with these rules and the policies of The Florida Bar. After completion of review, a recommendation concerning the proposal will be made to the board.

(d) Notice of Proposed Board Action. Notice of the proposed action of the board on a proposed amendment will be given in an edition of *The Florida Bar News* and on The Florida Bar website prior to the meeting of the board at which the board action is taken. The notice will identify the rule(s) to be amended and state in general terms the nature of the proposed amendments.

(e) Comments by Members. Any member may request a copy of the proposed amendments and may file written comments concerning them. The comments must be filed with the executive director sufficiently in advance of the board meeting to allow for distribution to the members of the board.

(f) Approval of Amendments. Amendments to other than chapters 7 and 9, as well as the standards for the individual areas of certification within chapter 6 of these Rules Regulating The Florida Bar must be by petition to the Supreme Court of Florida. Petitions to amend these Rules Regulating The Florida Bar may be filed by the board of governors or by 50 members in good standing, provided that any amendments proposed by members of the bar must be filed 90 days after filing them with The Florida Bar.

(g) Notice of Intent to File Petition. Notice of intent to file a petition to amend these Rules Regulating The Florida Bar will be published in *The Florida Bar News* and on The Florida Bar website at least 30 days before the filing of the petition. The notice will identify the rule(s) to be amended, state in general terms the nature of the proposed amendments, state the date the petition will be filed, and state that any comments or objections must be filed within 30 days of filing the petition. The full text of the proposed amendment(s) will be published on The Florida Bar website. A copy of all comments or objections must be served on the executive director of The Florida Bar and any persons who may have made an appearance in the matter.

(h) Action by the Supreme Court of Florida. The court will review all proposed amendments filed under this rule and any amendments will not become effective until an order is issued approving them. A summary of final action of the court will be reported in *The Florida Bar News* and on The Florida Bar website.

(i) Waiver. On good cause shown, the court may waive any or all of the provisions of this rule.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 20, 1995 (658 So.2d 930); amended November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010. Amended April 12, 2012, effective July 1, 2012 (SC10-1967), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

1-13. TIME

RULE 1-13.1 TIME

(a) Computation. In computing any period of time prescribed or allowed by the Rules Regulating The Florida Bar, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be

included unless it is a Saturday, Sunday, or legal holiday, in which event the period will run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Additional Time after Service by Mail or E-mail. When a person has the right or is required to do some act or take some proceeding within a prescribed period after service of a notice or other paper and the notice or paper is served by mail or e-mail, 5 days will be added to the prescribed period.

Added Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

1-14. RECORDS

RULE 1-14.1 ACCESS TO RECORDS

(a) Confidential Records. All records specifically designated confidential by court rules, the Florida or United States Constitution, statutes, attorney work product, and attorney-client communications shall be confidential. In the event that The Florida Bar objects to production, these records shall not be produced without order of the Supreme Court of Florida or some person designated by the supreme court to decide whether the records should be disclosed.

(b) Records Confidential under Applicable Law. All records in the possession of The Florida Bar that are confidential under applicable rule or law when made or received shall remain confidential and shall not be produced by the bar, except as authorized by rule or law or pursuant to order of the Supreme Court of Florida.

(c) Rules of Procedure and Florida Evidence Code; Applicability. Except as otherwise provided in these Rules Regulating The Florida Bar, any restrictions to production of records contained in the Florida Evidence Code (chapter 90, Florida Statutes, as amended), Florida Rules of Civil Procedure, or Florida Rules of Criminal Procedure shall apply to requests for access to the records of The Florida Bar.

(d) Access to Records; Notice; Costs of Production. Any records of The Florida Bar that are not designated confidential by these Rules Regulating The Florida Bar shall be available for inspection or production to any person upon reasonable notice and upon payment of the cost of reproduction of the records.

Added effective October 29, 1992 (608 So.2d 472).

CHAPTER 2. BYLAWS OF THE FLORIDA BAR
2-1. SEAL, EMBLEMS, AND SYMBOLS
BYLAW 2-1.1 SEAL

The official seal of The Florida Bar shall be inscribed “The Florida Bar” on upper circular portion, “1950” on lower circular portion, with the official state seal occupying center portion.

Amended March 2, 1988.

BYLAW 2-1.2 USAGE

The usages of the seal, emblems, or other symbols of The Florida Bar shall be determined by the board of governors.

Amended March 2, 1988, effective Feb. 8, 2001 (795 So.2d 1).

2-2. MEMBERSHIP
BYLAW 2-2.1 ATTAINING MEMBERSHIP

Persons shall initially become a member of The Florida Bar, in good standing, only upon certification by the Supreme Court of Florida in accordance with the rules governing the Florida Board of Bar Examiners and administration of the required oath.

Amended March 2, 1988; amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-2.2 LAW FACULTY AFFILIATES

Law faculty affiliates shall pay fees as set by the board of governors, shall be entitled to receive The Florida Bar Journal and The Florida Bar News, and shall have such other privileges and benefits of members of The Florida Bar as the board of governors shall authorize. The executive director shall issue to law faculty affiliates such special identification card as may be authorized by the board of governors.

Amended March 2, 1988.

BYLAW 2-2.3 LIST OF MEMBERS

The executive director shall furnish the chief judge of each circuit and the clerk of each court a list of all members in good standing and a list of all inactive members and shall furnish corrections and additions to such lists as occasion may require.

Amended March 2, 1988, March 30, 1989, effective March 31, 1989 (541 So.2d 110).

2-3. BOARD OF GOVERNORS

BYLAW 2-3.1 GENERALLY

The board of governors shall be the governing body of The Florida Bar. The board of governors shall have the power and duty to administer the Rules Regulating The Florida Bar, including the power to employ necessary personnel. Subject to the authority of the Supreme Court of Florida, the board of governors, as the governing body of The Florida Bar, shall be vested with exclusive power and authority to formulate, fix, determine, and adopt matters of policy concerning the activities, affairs, or organization of The Florida Bar. The board of governors shall be charged with the duty and responsibility of enforcing and carrying into effect the provisions of the Rules Regulating The Florida Bar and the accomplishment of the aims and purposes of The Florida Bar. The board of governors shall direct the manner in which all funds of The Florida Bar are disbursed and the purposes therefor and shall adopt and approve a budget for each fiscal year. The board of governors shall perform all other duties imposed under the Rules Regulating The Florida Bar and shall have full power to exercise such functions as may be necessary, expedient, or incidental to the full exercise of any powers bestowed upon the board of governors by said rules or any amendment thereto or by this chapter.

Amended March 2, 1988, July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-3.2 POWERS

(a) Authority of Board; Supervision by Court. Subject to the continued direction and supervision by the Supreme Court of Florida, the board of governors may, by amendment to this chapter, take all necessary action to make nominations and appointments where authorized, support the Florida Bar Foundation, and create or abolish programs.

(b) Nomination and Appointment by Board. The board of governors may make nominations to or appointments to associations or other entities as required by the Rules Regulating The Florida Bar, this chapter, and any rules or policies adopted by the board of governors in accordance therewith or as required by law.

(c) Florida Bar Foundation. The board of governors may support the foundation known as The Florida Bar Foundation for charitable, scientific, literary, and educational purposes.

(d) Programs. The board of governors may establish, maintain, and supervise:

- (1) a lawyer referral service;
- (2) programs for providing continuing legal education for its members;
- (3) the production of various print or electronic media for its members, affiliates, and the public;
- (4) a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law;

- (5) a program of cooperation with the faculty of accredited Florida law schools;
- (6) a program for providing pre-paid legal services;
- (7) a program for providing advice and educational information to members of the bar concerning the operation and management of law offices;
- (8) programs for promoting and supporting the bar's public service obligations and activities, including, but not limited to, pro bono services support and law related education;
- (9) programs for the development and provision of benefits and services to bar members, including, but not limited to, insurance benefits and association member discounts on goods and services;
- (10) a program or funding for a program to provide for identification of and assistance to members of The Florida Bar who suffer from impairment related to chemical dependency or psychological problems;
- (11) a program for providing enhanced opportunities and participation in the profession to minority members of the bar;
- (12) a program to enhance the levels of professionalism within the courts, law schools, and the legal profession; and
- (13) programs for providing information or discussion about lawyers and the legal system.

Amended March 2, 1988, April 13, 1989; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

BYLAW 2-3.3 FORMULA FOR APPORTIONMENT OF MEMBERS OF BOARD OF GOVERNORS

(a) Nonresident Representation. As used in these bylaws, "judicial circuit" and "circuit" shall include a hypothetical out-of-state judicial circuit with a circuit population equal to 50% of the number of members of The Florida Bar in good standing residing outside of the state of Florida.

(b) Apportionment Formula. The formula for determining the number of representatives apportioned to and elected from each judicial circuit shall be as follows:

(1) *Determination of Median Circuit Population.* Determine the median number of members in good standing residing in the judicial circuits ("the median circuit population") by ranking the judicial circuits in order of the number of members in good standing residing in each circuit and determining the number of members in good standing residing in the judicial circuit that is ranked exactly midway between the circuit with the largest number of members and the circuit with the smallest number of members or, if there is an even number of circuits, calculating the average membership of the 2 circuits that are ranked midway

between the circuit with the largest number of members and the circuit with the smallest number of members.

(2) *Apportionment of Representatives Among the Judicial Circuits.* Apportion representatives among the judicial circuits by assigning to each judicial circuit the number of representatives equal to the quotient obtained by dividing the number of members in good standing residing in that circuit by the median circuit population and rounding to the nearest whole number.

(3) *Determination of Deviation From Median Circuit Population.* Determine the relative deviation of each circuit's proportionate representation from the median circuit population by (A) calculating the number of resident members per representative so apportioned, rounded to the nearest whole number, (B) subtracting from that number the median circuit population, (C) dividing the difference by the median circuit population, and (D) converting the quotient so obtained to the equivalent percentile.

(4) *Adjustment to Deviation From Median Circuit Population.* Determine whether each circuit's relative deviation from the median circuit population would be reduced by adding or subtracting 1 representative, and, if so, add or subtract 1 representative as indicated.

(5) *Minimum Guaranteed Representatives.* Assign 1 representative to each judicial circuit not otherwise qualifying for a representative under the calculations made in subdivisions (1) and (2).

(6) *Increase or Reduction in Number of Representatives to Achieve Required Board Size.* If the total number of representatives assigned to the judicial circuits as a result of the steps set forth in subdivisions (1) through (5), when added to the number of officers and other representatives who are members of the board by virtue of the provisions of rule 1-4.1, would result in a board of greater or fewer than 51 voting persons, increase or reduce the number of voting members of the board to exactly 51 voting persons by (A) determining which judicial circuit among those to which more than 1 representative has been apportioned would have the smallest relative deviation from the median circuit population after the gain or loss of 1 representative, (B) adding or subtracting 1 representative from that circuit, as indicated, and (C) repeating those 2 steps as necessary until the total number of voting board members is increased or reduced to exactly 51.

Amended Dec. 10, 1987, effective Jan. 1, 1988 (518 So.2d 251); March 2, 1988, July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115) Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

BYLAW 2-3.4 ANNUAL APPORTIONMENT

(a) Certification of Membership by Executive Director. The executive director shall each year as of October 1 determine from the official records of The Florida Bar the number of members, in good standing, of The Florida Bar residing in each judicial circuit and outside the State of Florida. For purposes of these rules, residency shall be determined by a member's

official bar address. The executive director shall thereafter determine by application of the formula in bylaw 2-3.3 the number of members of the board of governors to serve from each judicial circuit. The executive director shall file a certificate setting forth the above information with the clerk of the Supreme Court of Florida and shall cause a copy of such certificate to be published in The Florida Bar News on or before November 1 of each year and shall include the names of those incumbent board of governors' representatives who have advised the executive director of their intentions to seek reelection in accordance with the provisions of subdivision (b). The certificate shall be published in the format of bylaw 2-3.5(a). The reapportionment established by the terms of such certificate shall automatically amend bylaw 2-3.5(a) on December 1 unless the Supreme Court of Florida orders otherwise.

(b) Members' Intentions to Seek Reelection. Board of governors' members, in a nonbinding notification tendered to The Florida Bar no later than October 1 in the final year of their term of office, shall advise the executive director of their intentions to seek reelection to a new term. The executive director shall cause such information to be published in The Florida Bar News within the certification of board of governors' membership specified in subdivision (a).

(c) Elected Members to Serve Full Term. No elected member of the board of governors shall serve less than the full term to which elected by reason of any reapportionment required by subdivision (a).

Amended March 2, 1998; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 20, 1995 (658 So.2d 930).

BYLAW 2-3.5 NOMINATION OF MEMBERS

(a) Staggered Terms. Elections shall be held and appointments made in even-numbered years for the following board of governors' representatives:

Circuit (seat #)

1
2(2)
3
4(1)
6(1)
7
9(1)
9(3)
10
11(1)
11(3)
11(5)
11(7)
11(9)
13(1)
14

15(1)
15(3)
17(1)
17(4)
18
20
nonresident (2)
nonresident (4)
public member (2)

Elections shall be held and appointments made in odd-numbered years for the following board of governors' representatives:

Circuit (seat #)

2(1)
4(2)
5
6(2)
8
9(2)
11(2)
11(4)
11(6)
11(8)
11(10)
12(1)
13(2)
13(3)
15(2)
16
17(2)
17(3)
17(5)
19
nonresident (1)
nonresident (3)
public member (1)

As additions or deletions of circuit representatives resulting from the application of the formula provided in this rule necessitate changes in the lists set forth above, both in circuit and office numbers, such changes shall be made by the executive director as appropriate and shall be published in The Florida Bar News on or before November 1.

(b) Time for Filing Nominating Petitions. Nominations for the election of representatives on the board of governors from each judicial circuit shall be made by written petition signed by not fewer than 5 members of The Florida Bar in good standing. In each circuit in which there is more than 1 representative to be elected, the offices of the representatives shall be designated

numerically, with the executive director making whatever adjustments are necessary to reflect changes resulting from the annual certification, and a nominating petition shall state the number of the office sought by a nominee. Any number of candidates may be nominated on a single petition, and any number of petitions may be filed, but all candidates named in a petition and all members signing such petition shall have their official bar address in the judicial circuit that the candidate is nominated to represent and shall be members of The Florida Bar in good standing. Nominations for election of a nonresident member of the board of governors shall be by written petition signed by not fewer than 5 nonresident members of The Florida Bar in good standing. Nominees shall endorse their written acceptance on such petitions but no nominee shall accept nomination for more than 1 office. All nominating petitions shall be filed with the executive director at the headquarters office on or before 5:00 p.m., December 15 prior to the year of election. Filing by facsimile is permitted but shall occur only when transmission is complete. On a date to be fixed by the executive director the nominating petitions shall be canvassed and tabulated by the executive director who shall thereupon certify in writing the names of all members who have been properly nominated and file such certificate with the clerk of the Supreme Court of Florida.

(c) Nomination and Appointment of Nonlawyer Members. The board of governors' members who are not members of The Florida Bar shall be chosen and appointed by the Supreme Court of Florida from the list of nominees to be filed with the court by the board of governors. The board of governors of The Florida Bar by majority vote shall nominate 3 persons for each nonlawyer seat and shall file the nominations with the Supreme Court of Florida on or before April 15 of the appointment year for that seat. The 2 nonlawyer members shall serve staggered terms of 2 years and shall serve no more than 2 terms.

Amended Dec. 10, 1987, effective Jan. 1, 1988 (518 So.2d 251); March 2, 1998; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (544 So.2d 282); July 20, 1995 (658 So.2d 930); July 17, 1997 (697 So.2d 115).

BYLAW 2-3.6 ELECTION

Voting shall be by secret ballot. The executive director shall prepare and cause to be printed a sufficient number of ballots for the election of nonresident board members and for each judicial circuit office for which an election is to be held. One of such ballots shall be mailed to each member of The Florida Bar in good standing in each of such judicial circuits and to each nonresident member of The Florida Bar in good standing in the case of election of a nonresident board member. The records of the executive director shall be conclusive in determining the members entitled to receive such ballots. When more than one office is to be filled, the offices shall be listed on the ballots in numerical order. The names of candidates on the ballots shall be listed alphabetically for each office. The ballots shall be mailed on or before March 1. Only voted ballots received by the executive director prior to midnight on March 21 shall be counted or tabulated. Immediately after March 21, the executive director shall canvass and tabulate the ballots received, certify the results of the election, and file such certificate with the clerk of the Supreme Court of Florida. Failure to make a nomination shall result in a vacancy to be filled in accordance with the provisions of bylaw 2-3.9. The candidate for an office receiving a majority of the votes cast for the office shall be declared elected. In the event no candidate receives such majority there shall be a runoff election between the 2 candidates receiving the highest number

of votes. The ballots for the runoff shall be mailed on or before April 1 and the voted ballots shall be received by the executive director prior to midnight on April 22. The ballots shall be counted and the results certified as provided for the first election. In the event that only 1 candidate has been nominated for a particular office on the board of governors, such candidate shall be declared elected. Results of the election shall be furnished by the executive director to the officers, members of the board of governors, and all candidates and may be furnished to any other interested persons upon their request.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 20, 1995 (658 So.2d 930).

BYLAW 2-3.7 TERM

The term of office for those persons regularly elected or appointed is 2 years and thereafter until a successor's term commences. The term commences at the conclusion of the annual meeting of The Florida Bar following election or appointment to office. The term of office for those persons elected or appointed to fill a vacancy shall run for the balance of the term.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-3.8 REMOVAL

Any member of the board of governors may be removed for cause by resolution adopted by two-thirds of the entire membership of the board of governors.

Amended March 2, 1988.

BYLAW 2-3.9 VACANCY

Except for nonlawyer members, in the event of a vacancy on the board of governors the vacancy shall be filled by a special election within the framework of the pertinent election procedures presently existing under these rules relating to the election of members of the board of governors. Notice of the vacancy and the special election shall be given by publication in The Florida Bar News, which notice shall provide that nominating petitions must be filed within 30 days of the date of the publication of the notice with the executive director. The special election shall be held not less than 30 days and not more than 45 days after the publication of the notice. The procedures set forth in these rules for election shall be followed as closely as possible. In the event of a vacancy on the board of governors for a nonlawyer member, the vacancy shall be filled by special nomination and appointment in accordance with the provisions of bylaw 2-3.5(c).

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-3.10 MEETINGS

The board of governors will hold 6 regular meetings each year, at least 1 of which will be held in Tallahassee. The president-elect selects the places and times of the meetings to be held during the president-elect's term as president, subject to the approval of the board of governors. Special meetings will be held at the direction of the executive committee or the board of governors. Any member of The Florida Bar in good standing may attend meetings at any time except when the board is in executive session concerning disciplinary matters, personnel matters, member objections to legislative positions of The Florida Bar, or receiving attorney-client advice. Minutes of all meetings will be kept by the executive director.

Amended March 2, 1988; March 26, 1991; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

BYLAW 2-3.11 ELECTRONIC MEETINGS

Electronic meetings are authorized for all meetings of The Florida Bar; its board of governors; the executive committee and committees of its board of governors; and its sections, divisions, and committees. Special rules of order pertaining to the conduct of electronic meetings may be adopted by the board of governors.

Amended March 2, 1988; amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-3.12 EXECUTIVE COMMITTEE

Unless otherwise limited by these rules, the executive committee shall have full power and authority to exercise the function of the board of governors to the extent authorized by the board of governors on any specific matter, and on any other matter that necessarily must be determined between meetings of the board of governors.

The executive committee shall notify the board of governors at the next meeting of all actions taken by the executive committee during the interim between meetings of the board of governors. Unless modified by the board of governors at such meeting, actions of the executive committee shall be final.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

2-4. OFFICERS

BYLAW 2-4.1 DUTIES OF PRESIDENT

The president shall conduct and preside at all meetings of The Florida Bar and the board of governors. The president shall be the official spokesperson for The Florida Bar and the board of governors. Unless otherwise provided herein, the president shall appoint all committees. The president shall be the chief executive of The Florida Bar and shall be vested with full power to exercise whatever functions may be necessary or incident to the full exercise of any power bestowed upon the president by the board of governors consistent with the provisions of these

Rules Regulating The Florida Bar. It shall be the duty and obligation of the president to furnish leadership in the accomplishment of the aims and purposes of The Florida Bar.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-4.2 DUTIES OF PRESIDENT-ELECT

It shall be the duty of the president-elect to render every assistance and cooperation to the president and provide the president with the fullest measure of counsel and advice. The president-elect shall be familiarized with all activities and affairs of The Florida Bar and shall have such other duties as may be assigned to the president-elect by the board of governors. In the event the president-elect is absent or unable to act, or in the event of the president-elect's death, disability, or resignation, the board of governors shall select an acting president-elect to hold office until a successor shall have been elected by the members of The Florida Bar in good standing at a special election held pursuant to the direction of the board of governors.

Amended March 2, 1988.

BYLAW 2-4.3 DUTIES OF EXECUTIVE DIRECTOR

The executive director shall be chosen by the board of governors and shall perform all duties usually required of a secretary and a treasurer and such other duties as may be assigned by the board of governors. The executive director shall serve as publisher of The Florida Bar Journal and The Florida Bar News and as director of public relations until otherwise directed by the board of governors. The executive director shall keep the records of The Florida Bar and the board of governors. The executive director shall maintain and be in charge of the offices and shall devote full time to the work of The Florida Bar. The board shall fix the executive director's salary and other benefits and emoluments of office.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-4.4 QUALIFICATIONS FOR OFFICE

Only members of The Florida Bar in good standing shall be eligible to hold any elective office in The Florida Bar. No officer shall engage in political activity on behalf of a candidate for public office except in furtherance of the objectives of The Florida Bar and with the approval of the board of governors.

Amended March 2, 1988.

BYLAW 2-4.5 NOMINATIONS FOR PRESIDENT-ELECT

(a) Policies. The Board of Governors of The Florida Bar is hereby authorized to adopt standing policies that govern the conduct of candidates and aspirants seeking support for their nomination as candidates, which shall include creation of a committee to oversee the conduct of

such individuals and promulgation of sanctions for failure to comply with these rules or the policies adopted by authority hereof.

(b) Nominations Process. Any member of The Florida Bar in good standing may be nominated as a candidate for president-elect by petition signed by not fewer than 1 percent of the members of The Florida Bar in good standing. Such nominating petitions shall be filed with the executive director at the headquarters office on or after November 15 and on or before 5:00 p.m., eastern time, December 15 of the year preceding the election. Nominees shall endorse their written acceptance upon such petition. In the event that no member of The Florida Bar in good standing shall be nominated, the board of governors shall thereafter nominate at least 1 candidate for the office of president-elect.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792); April 11, 1996 (672 So.2d 516); March 23, 2000 (763 So.2d 1002); amended November 19, 2009 (SC08-1890), (34 Fla.L.Weekly S628a), effective February 1, 2010.

BYLAW 2-4.6 ELECTION OF PRESIDENT-ELECT

The members of The Florida Bar in good standing shall elect annually a president-elect, who shall become president at the conclusion of the annual meeting following the term as president-elect.

Only those members who are members in good standing as of February 15 are eligible to vote in the initial election. If a runoff election is necessary, only those members who are members in good standing as of March 15 are eligible to vote in the runoff election.

Ballots for election of president-elect shall be mailed on or before March 1 to each eligible member of The Florida Bar. Ballots shall be mailed to the member's record bar address. The names of the candidates for the office of president-elect shall be printed on the ballot in alphabetical order. Only those ballots received by The Florida Bar or its representative prior to midnight, eastern time, March 21 shall be counted.

Immediately after March 21, the executive director shall canvass and tabulate the ballots received prior to midnight, eastern time, March 21, certify the results of the election, and file such certificate with the clerk of the Supreme Court of Florida. The candidate who receives the majority of the votes cast shall be declared elected.

In the event no candidate receives a majority of the votes cast, a runoff election between the 2 candidates receiving the highest number of votes shall be held. Ballots for the runoff election shall be mailed on or before April 1 to each eligible member of The Florida Bar. The runoff ballots shall be mailed to the member's record bar address. The names of the runoff candidates shall be printed on the ballot in alphabetical order. Only ballots received by The Florida Bar or its representative prior to midnight, eastern time, April 22 shall be counted.

Immediately after April 22, the executive director shall canvass and tabulate the ballots received prior to midnight, eastern time, April 22, certify the results, and file such certificate

with the clerk of the Supreme Court of Florida. The runoff candidate receiving a majority of the votes cast shall be declared elected.

The executive director shall furnish the results of the election to the officers and members of the board of governors of The Florida Bar, as well as to the candidates and, upon request, to any other interested person.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 11, 1996 (672 So.2d 516); March 23, 2000 (763 So.2d 1002).

BYLAW 2-4.7 PRESIDENT'S ABSENCE

In the event the president is absent or unable to act, the president's duties shall be performed by the president-elect; and in the event of the death or resignation of the president, the president-elect shall serve as president during the remainder of the term of office thus vacated and then shall serve as president for the term for which elected. In the event of the death or disability of both the president and the president-elect, the board of governors shall elect an acting president of The Florida Bar to hold office until the next succeeding annual meeting.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-4.8 PROHIBITION AGAINST SERVICE ON BOARD OF GOVERNORS AND AS PRESIDENT OR PRESIDENT-ELECT

In the event that a member of the board of governors shall become either the president or the president-elect of The Florida Bar such member shall not serve on the board of governors except as president or president-elect and the office of that member shall become vacant and shall be filled in accordance with the provisions of this chapter.

Amended March 2, 1988.

2-5. MEETINGS

BYLAW 2-5.1 ANNUAL MEETING

A program for the annual meeting of The Florida Bar shall be prepared by the president, with the advice and consent of the board of governors. Such program, when approved by the board of governors, shall be the order of business for the annual meeting and such order of business shall not be altered, except by consent of two-thirds of the members in good standing present and voting. Only the president, with the advice and consent of the board of governors, shall have the authority to extend invitations to nonmembers to attend the annual meeting as honored guests or speakers at the expense of The Florida Bar. No section or committee shall create any debt of The Florida Bar in connection with an annual meeting without prior approval of the board of governors. All papers, addresses, and reports read before or submitted at a meeting shall become the property of The Florida Bar and may be published by The Florida Bar. A registration fee for attendance at the annual meeting may be fixed by the board of governors to defray the costs and expenses in connection with such meeting.

Amended March 2, 1988.

BYLAW 2-5.2 RULES OF PROCEDURE

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Deleted February 21, 2011, effective March 9, 2011 (SC11-152).

2-6. FISCAL MANAGEMENT

BYLAW 2-6.1 EXPENDITURES

Within the parameters of the budget filed with the Supreme Court of Florida, the board of governors shall be vested with exclusive powers, authority, and control over all funds, property, and assets of The Florida Bar and the method and purpose of expenditure of all funds.

Amended March 2, 1988.

BYLAW 2-6.2 FISCAL YEAR

The fiscal year of The Florida Bar shall commence on July 1 of each year.

Amended March 2, 1988.

BYLAW 2-6.3 ANNUAL BUDGET

The board of governors, with the advice and counsel of the budget committee, shall adopt an annual budget of The Florida Bar, setting forth the anticipated revenues and expenditures for the fiscal year.

Amended March 2, 1988.

BYLAW 2-6.4 BUDGET COMMITTEE

The budget committee shall consist of 9 members having staggered terms. The president-elect, with the approval of the board of governors, shall appoint 3 members to 3-year terms, shall fill vacancies for the balance of a term, and shall name a chair-elect from the members of the committee. The chair-elect shall become chair when the president-elect becomes president and the chair shall serve as a tenth member of the committee if the chair's term on the committee would otherwise expire.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.5 NOTICE OF BUDGET COMMITTEE HEARINGS

The executive director shall publish a notice in The Florida Bar Journal or The Florida Bar News not later than a March issue giving notice of meetings of the budget committee in each of the districts of the district courts of appeal to receive suggestions from members of The Florida Bar for the preparation of the budget for the succeeding fiscal year. Such meetings shall be held not earlier than the fifteenth day of the month succeeding the month in which the notice is published. Written notice of intent to appear at such meetings must be received by the executive director at least 10 days prior to the date of the meeting. If no person files such a notice, the meeting may be canceled.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.6 TENTATIVE BUDGET OF BUDGET COMMITTEE

At the meeting announced by such published notice, the budget committee shall hear and receive suggestions from members of The Florida Bar for the preparation of the budget for The Florida Bar for the succeeding fiscal year. The manner of filing and hearing such suggestions shall be set forth in the notice. After consideration of the suggestions received, the budget committee shall prepare a tentative budget for the succeeding fiscal year, which shall be filed with the executive director.

Amended March 2, 1988.

BYLAW 2-6.7 PROPOSED BUDGET OF BOARD OF GOVERNORS

The board of governors, after considering the tentative budget prepared by the budget committee, shall adopt a proposed budget for the succeeding fiscal year in time to allow publication thereof not later than an April issue of The Florida Bar Journal or The Florida Bar News.

Amended March 2, 1988.

BYLAW 2-6.8 MEMBERSHIP FEES

The membership fees for members of The Florida Bar shall be included in the proposed budget filed by The Florida Bar in the Supreme Court of Florida.

Amended March 2, 1988; Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

BYLAW 2-6.9 NOTICE OF BOARD OF GOVERNORS HEARING UPON PROPOSED BUDGET

The executive director shall publish a notice in The Florida Bar Journal or The Florida Bar News not later than an April issue giving notice of a meeting of the board of governors to be held

no earlier than the fifteenth day of the month succeeding the month the notice is published. Such notice shall contain the proposed budget and shall advise that the proposed budget shall become final unless written objections to any item or items therein shall be filed by members of The Florida Bar with the executive director on or before the tenth day of the month following the month of publication.

Amended March 2, 1988.

BYLAW 2-6.10 HEARING AND ADOPTION OF BUDGET BY BOARD OF GOVERNORS

If written objections to any item or items of the proposed budget are filed by members of The Florida Bar within the time provided, a hearing thereon shall be held by the board of governors at the time and place provided in such notice. After such hearing the board of governors shall consider the objections filed and upon consideration thereof the board may amend the proposed budget within the scope of the objections.

Amended March 2, 1988.

BYLAW 2-6.11 FILING OF BUDGET WITH THE SUPREME COURT OF FLORIDA

The budget proposed by the board of governors shall be filed with the supreme court on or before June 1 and shall become effective unless rejected by the court within 30 days.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.12 AMENDMENT OF THE BUDGET

The board of governors, in its discretion from time to time, may amend the budget in order to provide funds for needed expenditures; provided, however, that the total of increases in items of the budget made by amendment, including new items created by such amendments, shall not exceed 10 percent of the total income of The Florida Bar for the current fiscal year as anticipated at the time of the amendment. If a proposed amendment shall cause the total of increases in items of the budget made by amendment to exceed such limitation, a hearing upon objections to any item or items therein shall be held by the board of governors in like manner as that provided for the proposed budget. The executive director shall publish a notice in The Florida Bar Journal or The Florida Bar News giving notice of a board of governors meeting to be held no earlier than the fifteenth day of the month succeeding the month in which the notice is published. Such notice shall contain the proposed amendment and shall advise that the proposed amendment shall become final unless written objections to any item or items therein shall be filed by members of The Florida Bar with the executive director on or before the tenth day of the month following the month of publication. If the proposed amendment is adopted by the board of governors in whole or in part, the amendment of the budget shall be filed with the Supreme Court of Florida within the month following the month in which the amendment is adopted.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.13 APPROPRIATIONS OF THE BUDGET

Each item of the budget shall be deemed a fixed appropriation, subject only to amendment as provided. All uncommitted balances of appropriations except appropriated restrictions of fund balances shall revert at the end of each fiscal year to the funds from which appropriated. No uncommitted appropriations other than those for the clients' security fund shall continue beyond the fiscal year for which the budget containing the appropriation is adopted.

Amended March 2, 1988.

BYLAW 2-6.14 DISBURSEMENTS

The appropriations of the budget shall be disbursed by the executive director in the executive director's capacity as treasurer of The Florida Bar in accordance with this chapter. The executive director shall make such disbursements as are required to pay the obligations and expenses of The Florida Bar made within the provisions of the budget.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.15 CONTINUATION OF FUNDING

Any program that calls for an expenditure of funds in excess of \$10,000 during any fiscal year shall not be continued beyond the last day of the second of 2 fiscal years unless such program is specifically authorized by this or other chapters of the Rules Regulating The Florida Bar.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-6.16 ACCOUNTING AND AUDIT

The board of governors shall cause books and accounts to be kept in accordance with good accounting practices. Such records shall be audited annually by a certified public accountant authorized to practice in the State of Florida, and a copy of the audit shall be filed forthwith with the Supreme Court of Florida. Within a reasonable time after completion of the audit a condensed summary thereof shall be published in The Florida Bar Journal or The Florida Bar News and a copy filed with the Supreme Court of Florida.

Amended March 2, 1988.

2-7. SECTIONS AND DIVISIONS

BYLAW 2-7.1 RULES APPLICABLE TO SECTIONS AND DIVISIONS

All sections and divisions are governed by the provisions of the Rules Regulating The Florida Bar, this chapter, and the bylaws of the sections and divisions as approved by the board of governors and have the scope, powers, duties, and functions expressed in those documents.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792).

BYLAW 2-7.2 DUTIES

It is the duty of each section and division, as an integral part of The Florida Bar, to work in cooperation with the board of governors and under its supervision toward accomplishment of the aims and purposes of The Florida Bar and of that section or division.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792).

BYLAW 2-7.3 CREATION OF SECTIONS AND DIVISIONS

Sections and divisions may be created or abolished by the board of governors as deemed necessary or desirable. The Florida Bar will maintain current lists of its sections and divisions and will post the lists on its website.

Amended March 2, 1988; March 30, 1990; April 2, 1992 (597 So.2d 792); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 20, 1995 (658 So.2d 930); June 27, 1996, effective July 1, 1996 (677 So.2d 272); July 17, 1997 (697 So.2d 115); Feb. 8, 2001 (795 So.2d 1); Dec. 20, 2007, effective March 1, 2008 (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

BYLAW 2-7.4 PROCEDURE FOR CREATION OF SECTIONS AND DIVISIONS

Those seeking approval of the board of governors to establish a section or division shall prepare and submit proposed bylaws for approval by the board of governors. They shall also inform the board of governors of the justification for establishing the section or division, the proposed dues, proposed budgeting, and proposed function and program of the section or division.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792).

BYLAW 2-7.5 LEGISLATIVE ACTION OF SECTIONS AND DIVISIONS

(a) Limits of Legislative Involvement. Sections and divisions may be involved in legislation that is significant to the judiciary, the administration of justice, or the fundamental legal rights of the public or interests of the section or division or its programs and functions.

(b) Procedure to Determine Legislative Policy. Sections and divisions shall be required to adopt and follow a reasonable procedure, approved by the board of governors, for determination of legislative policy on any legislation.

(c) Notice to Executive Director. Sections and divisions shall notify the executive director immediately of determination of any section or division action regarding legislation.

(d) Identification of Action. Any legislative action taken by a section or division shall be clearly identified as the action of the section or division and not that of The Florida Bar.

Amended March 2, 1988; April 2, 1992 (597 So.2d 792).

2-8. COMMITTEES

BYLAW 2-8.1 ESTABLISHMENT AND APPOINTMENT OF COMMITTEES

In addition to those committees established elsewhere under this chapter or other chapters of the Rules Regulating The Florida Bar, the board of governors shall create such committees as it may deem advisable and necessary from time to time. The board of governors may dissolve a committee when it deems that the work of the committee has been completed or is no longer necessary. The board of governors may provide for members of any committee to serve for staggered terms beyond the current administrative year. Any vacancies in these committees shall be filled for the unexpired portion in order to provide a regular rotation of committee members. Before June 1 of each year, the president-elect shall appoint all committee members (except for grievance and unlicensed practice of law), who shall serve for the ensuing administrative year. The president-elect shall report the membership of committees to the board of governors and shall, with the advice and consent of the board of governors, name and designate the chair and vice-chair of each committee. Persons who are not members of The Florida Bar may be appointed to committees with the advice and consent of the board of governors. The president shall fill vacancies occurring in the membership of the committees for the remainder of the unexpired term and may remove or appoint additional members to a committee.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-8.2 COMMITTEE OPERATIONS

Each committee shall select from its membership such officers other than the chair and vice-chair as it deems advisable and subcommittees may be designated by the chair from the membership of the committee. Each committee shall meet at such times and places as may be designated by the chair or vice-chair. Each committee shall file with the president and executive director all minutes, annual reports, and procedures and recommendations and such interim reports as desired or may be requested by the president or board of governors. No action, report, or recommendation of any committee shall be binding upon The Florida Bar unless adopted and approved by the board of governors.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-8.3 STANDING AND SPECIAL COMMITTEES

The board of governors shall determine and designate which committees shall be considered as standing committees (permanent) and which committees shall be considered as special committees (temporary or limited) and shall define the specific powers, duties, functions, and scope thereof.

Amended March 2, 1988.

BYLAW 2-8.4 COMMITTEE FINANCES

No committee shall incur any debt payable by The Florida Bar without prior approval of the executive director. Each committee shall file with the executive director a detailed statement setting forth any funds needed or required in connection with the work of such committee during the ensuing administrative year for consideration by and inclusion in the annual budget of The Florida Bar after approval by the board of governors.

Amended March 2, 1988.

2-9. POLICIES AND RULES

BYLAW 2-9.1 AUTHORITY OF BOARD OF GOVERNORS

In order to accomplish the purposes of The Florida Bar and implement the Rules Regulating The Florida Bar, including this chapter, the board of governors shall have the power and authority to establish policies and rules of procedure on the subjects and in the manner provided in this rule.

Amended March 2, 1988.

BYLAW 2-9.2 ADOPTION, AMENDMENT, AND WAIVER OF STANDING BOARD POLICIES AND RULES OF ORDER

The board of governors may adopt standing board policies governing the administration and operation and special rules of order governing parliamentary procedures of The Florida Bar and the board of governors. The board of governors may adopt, amend, or rescind standing board policies and special rules of order by a majority vote of the membership of the board of governors provided any amendment to any standing board policy or special rules of order is not effective until 30 days after adoption or another date specifically approved by the board of governors. Standing board policies and special rules of order may be adopted, rescinded, or amended by a majority vote of those present at any regular meeting of the board of governors provided advance written notice is given to the members of the board of governors of the proposed adoption, repeal, or amendment of any standing board policy or special rule of order. The provision of any standing board policy or special rule of order may be waived by a two-thirds vote of those present at any regular meeting of the board of governors.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-9.3 LEGISLATIVE POLICIES

(a) Adoption of Rules of Procedure and Legislative Positions. The board of governors adopts and may repeal or amend rules of procedure governing the legislative activities of The

Florida Bar in the same manner as provided in bylaw 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present and voting at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.

(b) Publication of Legislative Positions. The Florida Bar shall publish notice of adoption of legislative positions in The Florida Bar News, in the issue immediately following the board meeting at which the positions were adopted.

(c) Objection to Legislative Positions of The Florida Bar.

(1) Any member in good standing of The Florida Bar may, within 45 days of the date of publication of notice of adoption of a legislative position, file with the executive director a written objection to a particular position on a legislative issue. The identity of an objecting member shall be confidential unless made public by The Florida Bar or any arbitration panel constituted under these rules upon specific request or waiver of the objecting member. Failure to object within this time period shall constitute a waiver of any right to object to the particular legislative issue.

(2) After a written objection has been received, the executive director shall promptly determine the pro rata amount of the objecting member's membership fees at issue and such amount shall be placed in escrow pending determination of the merits of the objection. The escrow figure shall be independently verified by a certified public accountant.

(3) Upon the deadline for receipt of written objections, the board of governors shall have 45 days in which to decide whether to give a pro rata refund to the objecting member(s) or to refer the action to arbitration.

(4) In the event the board of governors orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow for the duration of the fiscal year and until the conclusion of The Florida Bar's annual audit as provided in bylaw 2-6.16, which shall include final independent verification of the appropriate refund payable. The Florida Bar shall thereafter pay the refund within 30 days of independent verification of the amount of refund, together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(d) Composition of Arbitration Panel. Objections to legislative positions of The Florida Bar may be referred by the board of governors to an arbitration panel comprised of 3 members of The Florida Bar, to be constituted as soon as practicable following the decision by the board of governors that a matter shall be referred to arbitration.

The objecting member shall be allowed to choose 1 member of the arbitration panel, The Florida Bar shall appoint the second panel member, and those 2 members shall choose a third member of the panel who shall serve as chair. In the event the 2 members of the panel are

unable to agree on a third member, the chief judge of the Second Judicial Circuit of Florida shall appoint the third member of the panel.

(e) Procedures for Arbitration Panel.

(1) Upon a decision by the board of governors that the matter shall be referred to arbitration, The Florida Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member. Such response and objection shall be forwarded to the arbitration panel as soon as the panel is properly constituted. Venue for any arbitration proceedings conducted pursuant to this rule shall be in Leon County, Florida; however, for the convenience of the parties or witnesses or in the interest of justice, the proceedings may be transferred upon a majority vote of the arbitration panel. The chair of the arbitration panel shall determine the time, date, and place of any proceeding and shall provide notice thereof to all parties. The arbitration panel shall thereafter confer and decide whether The Florida Bar proved by the greater weight of evidence that the legislative matters at issue are constitutionally appropriate for funding from mandatory Florida Bar membership fees.

(2) The scope of the arbitration panel's review shall be to determine solely whether the legislative matters at issue are within those acceptable activities for which compulsory membership fees may be used under applicable constitutional law.

(3) The proceedings of the arbitration panel shall be informal in nature and shall not be bound by the rules of evidence. If requested by an objecting member who is a party to the proceedings, that party and counsel, and any witnesses, may participate telephonically, the expense of which shall be advanced by the requesting party. The decision of the arbitration panel shall be binding as to the objecting member and The Florida Bar. If the arbitration panel concludes the legislative matters at issue are appropriately funded from mandatory membership fees, there shall be no refund and The Florida Bar shall be free to expend the objecting member's pro rata amount of membership fees held in escrow. If the arbitration panel determines the legislative matters at issue are inappropriately funded from mandatory membership fees, the panel shall order a refund of the pro rata amount of membership fees to the objecting member.

(4) The arbitration panel shall thereafter render a final written report to the objecting member and the board of governors within 45 days of its constitution.

(5) In the event the arbitration panel orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow until paid. Within 30 days of independent verification of the amount of refund, The Florida Bar shall provide such refund together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(6) Each arbitrator shall be compensated at an hourly rate equal to that of a circuit court judge based on services performed as an arbitrator pursuant to this rule.

(7) The arbitration panel shall tax all legal costs and charges of any arbitration proceeding conducted pursuant to this rule, to include arbitrator expenses and compensation, in favor of the prevailing party and against the nonprevailing party. When there is more than one party on one or both sides of an action, the arbitration panel shall tax such costs and charges against nonprevailing parties as it may deem equitable and fair.

(8) Payment by The Florida Bar of the costs of any arbitration proceeding conducted pursuant to this bylaw, net of costs taxed and collected, shall not be considered to be an expense for legislative activities, in calculating the amount of membership fees refunded pursuant to this bylaw.

Amended March 2, 1988; June 2, 1988 (526 So.2d 688); March 26, 1991; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179; April 25, 2002 (820 So.2d 210)).

BYLAW 2-9.4 ETHICS

(a) Rules of Procedure. The board of governors adopts rules of procedure governing the manner in which opinions on professional ethics may be solicited by members of The Florida Bar, issued by the staff of The Florida Bar or by the professional ethics committee, circulated or published by the staff of The Florida Bar or by the professional ethics committee, and appealed to the board of governors of The Florida Bar.

(b) Amendment. The adoption of, repeal of, or amendment to the rules authorized by subdivision (a) is effective only under the following circumstances:

(1) The proposed rule, repealer, or amendment is approved by a majority vote of the board of governors at any regular meeting of the board of governors.

(2) The proposal is published in *The Florida Bar News* at least 20 days preceding the next regular meeting of the board of governors.

(3) The proposal receives a majority vote of the board of governors at its meeting following publication.

(c) Waiver. The rules of procedure adopted as required in subdivision (a) may be temporarily waived as to any particular matter only on unanimous vote of those present at any regular meeting of the board of governors.

(d) Confidentiality. Each advisory opinion issued by Florida Bar ethics counsel will be identified as a “staff opinion” and be available for inspection or production. The names and any identifying information of any individuals mentioned in a staff opinion will be deleted before the staff opinion is released to anyone other than the member of The Florida Bar making the original request for the advisory opinion.

(e) Disqualification as Lawyer Due to Conflict.

(1) *Representation Prohibited.* Lawyers may not represent any person or entity other than The Florida Bar in proceedings for the issuance of opinions on professional ethics authorized by these rules if they are:

(A) currently serving on the professional ethics committee or the board of governors;

(B) employees of The Florida Bar; or

(C) former members of the professional ethics committee, former members of the board of governors, or former employees of The Florida Bar if personally involved to any degree in the matter while a member of the professional ethics committee or the board of governors, or while an employee of The Florida Bar.

(2) *Representation Permitted With Consent by the Board of Governors.* Lawyers may represent a person or entity other than The Florida Bar in proceedings for the issuance of opinions on professional ethics authorized by these rules only after receiving consent from the executive director or board of governors if they are:

(A) former members of the professional ethics committee, former members of the board of governors, or former employees of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the lawyer seeks to be a representative and who did not serve in a supervisory capacity over the matter within 1 year of the service or employment;

(B) a partner, associate, employer, or employee of a member of the professional ethics committee or a member of the board of governors; or

(C) a partner, associate, employer, or employee of a former member of the professional ethics committee or a former member of the board of governors within 1 year of the former member's service on the professional ethics committee or board of governors.

(3) *Participation in Issuance of Ethics Proceedings for Oneself.* The disqualification under this rule does not prohibit lawyers described above from participating on their own behalf in proceedings for the issuance of opinions on professional ethics authorized by these rules and the Florida Bar Procedures for Ruling on Questions of Ethics.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 29, 1992 (608 So.2d 472); May 20, 2004 (875 So.2d 448); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-9.5 ADMINISTRATIVE POLICIES

The executive director may adopt such policies or procedures necessary to govern the administrative operation of The Florida Bar and The Florida Bar staff, provided all policies of a continuing nature are in writing and a copy of all such policies is furnished to each member of

the board of governors and available for inspection by any member of The Florida Bar at all reasonable times.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

BYLAW 2-9.6 RULES OF ORDER

The current edition of Robert's Rules of Order is the parliamentary authority that governs the conduct of all meetings of The Florida Bar, its board of governors, its sections, divisions, and committees, except for Robert's Rules of Order that are inconsistent with these bylaws and the bar's Special Rules of Order as set forth in the Standing Board Policies or in section or division bylaws.

Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-9.7 INSURANCE FOR MEMBERS OF BOARD OF GOVERNORS, OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND EMPLOYEES

The bar will provide insurance coverage for members of the board of governors, officers of The Florida Bar, members of UPL, clients' security fund, and grievance committees, and employees of The Florida Bar as authorized by the budget committee and included in the budget. The bar will indemnify officers, board of governors, UPL, clients' security fund, and grievance committee members and bar employees as provided in the standing board policies.

Added March 9, 1987; Amended March 2, 1988; July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-9.8 RESERVED FOR FUTURE USE

Added effective April 13, 1989. Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179), amended November 9, 2017, effective February 1, 2018 (SC16-1962); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

BYLAW 2-9.9 PUBLIC INTEREST PROGRAMS

The board of governors hereby creates a program for promoting and supporting public service activities, which shall include, but not be limited to, pro bono services support and law related education.

Added effective April 13, 1989.

BYLAW 2-9.10 MEMBER BENEFITS PROGRAM

The board of governors hereby creates a program for developing and providing benefits to members of the bar, which shall include, but not be limited to, insurance and discounts on goods and/or services.

Added effective April 13, 1989.

BYLAW 2-9.11 ASSISTANCE TO MEMBERS SUFFERING FROM IMPAIRMENT RELATED TO CHEMICAL DEPENDENCY OR PSYCHOLOGICAL PROBLEMS

The Florida Bar shall create or fund a program for the identification of its members who suffer from impairment related to chemical dependency or psychological problems that affect their professional performance or practice of law, and the assistance of those members in overcoming such dependency or problems.

Added effective April 13, 1989. Amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended effective Feb. 8, 2001 (795 So.2d 1).

2-10. AMENDMENTS

BYLAW 2-10.1 PROPOSED AMENDMENTS

Amendments to these bylaws may be made in the manner set forth in rule 1-12.1.

Amended April 13, 1987, effective May 26, 1987; Aug. 7, 1987; March 2, 1988; Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121) July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

CHAPTER 3. RULES OF DISCIPLINE
3-1. PREAMBLE
RULE 3-1.1 PRIVILEGE TO PRACTICE

A license to practice law confers no vested right to the holder thereof but is a conditional privilege that is revocable for cause.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-1.2 GENERALLY

The Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, to determine what constitutes grounds for discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

No history provided as of 1/1/10.

3-2. DEFINITIONS
RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms have the meaning set forth below unless their use clearly indicates a different meaning:

(a) **Bar Counsel.** Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(b) **The Board or the Board of Governors.** The board or the board of governors is the board of governors of The Florida Bar.

(c) **Complainant or Complaining Witness.** A complainant or any complaining witness is any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(d) **This Court or the Court.** This court or the court is the Supreme Court of Florida.

(e) **Court of this State.** Court of this state is a state court authorized and established by the constitution or laws of the state of Florida.

(f) **Diversion to Practice and Professionalism Enhancement Programs.** Diversion to practice and professionalism enhancement programs is removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

(g) **Executive Committee.** Executive committee is the executive committee of the board of governors of The Florida Bar.

(h) Executive Director. Executive Director is the executive director of The Florida Bar.

(i) Inquiry. Inquiry is a written communication received by bar counsel questioning the conduct of a member of The Florida Bar.

(j) Practice and Professionalism Enhancement Programs. Practice and professionalism enhancement programs are programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

(k) Probable Cause. Probable cause is a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(l) Referral to Practice and Professionalism Enhancement Programs. Referral to practice and professionalism enhancement programs is placement of a lawyer in skills enhancement programs as a disciplinary sanction.

(m) Referee. Referee is a judge or retired judge appointed to conduct proceedings as provided under these rules.

(n) Respondent. Respondent is a member of The Florida Bar or a lawyer subject to these rules who is accused of misconduct or whose conduct is under investigation.

(o) Staff Counsel. Staff counsel is a lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

(p) Chief Branch Discipline Counsel. Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.

(q) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned with respect to a particular grievance committee or matter. The designated reviewer for a special grievance committee will be selected by the president and approved by the board.

(r) Final Adjudication. Final adjudication is a decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); April 25, 2002 (820 So.2d 210). Amended May 19, 2005 to be effective Jan. 1, 2006; emergency motion filed and order issued changing effective date to Sept 14, 2005 due to Hurricane Katrina; on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206); December 20, 2007, effective March 1, 2008 (SC06-736); amended

November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010; amended November 9, 2017, effective February 1, 2018 (SC16-1961).

3-3. JURISDICTION TO ENFORCE RULES

RULE 3-3.1 SUPREME COURT OF FLORIDA; DISCIPLINARY AGENCIES

The exclusive jurisdiction of the Supreme Court of Florida over the discipline of persons admitted to the practice of law will be administered in the following manner subject to the supervision and review of the court. The following entities are designated as agencies of the Supreme Court of Florida for this purpose with the following responsibilities, jurisdiction, and powers. The board of governors, grievance committees, and referees have the jurisdiction and powers necessary to conduct the proper and speedy disposition of any investigation or cause, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Each member of these agencies has the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the agency.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-3.2 BOARD OF GOVERNORS OF THE FLORIDA BAR

(a) Responsibility of Board. The board is assigned the responsibility of maintaining high ethical standards among the members of The Florida Bar. The board will supervise and conduct disciplinary proceedings in accordance with the provisions of these rules.

(b) Authority to File a Formal Complaint. No formal complaint may be filed by The Florida Bar in disciplinary proceedings against a member of the bar unless 1 of the following conditions has been met:

(1) *Finding of Probable Cause.* A formal complaint may be filed if there has been a finding under these rules that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action;

(2) *Emergency Suspension or Probation.* A formal complaint may be filed if the member is the subject of an order of emergency suspension or emergency probation that is based on the same misconduct that is the subject matter of the formal complaint;

(3) *Felony Determination or Adjudication.* A formal complaint may be filed if the respondent has been determined or adjudged to be guilty of the commission of a felony;

(4) *Discipline In Another Jurisdiction.* A formal complaint may be filed if the respondent has been disciplined by another entity having jurisdiction over the practice of law;

(5) *Felony Charges.* A formal complaint may be filed if a member has been charged with commission of a felony under applicable law that warrants the imposition of discipline and if the chair of the grievance committee agrees. A decision of the grievance committee chair to not file a formal complaint must be reviewed by the full grievance committee. The grievance committee may affirm or reverse the decision.

(6) *Discipline on Action of the Florida Judicial Qualifications Commission.* A formal complaint may be filed if the Supreme Court of Florida has adjudged the respondent guilty of judicial misconduct in an action brought by the Florida Judicial Qualifications Commission, the respondent is no longer a judicial officer, and the facts warrant imposing disciplinary sanctions.

(c) **Executive Committee.** All acts and discretion required by the board under these Rules of Discipline may be exercised by its executive committee between meetings of the board as may from time to time be authorized by standing board of governors' policies.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended November 19, effective February 1 (2010 SC08-1890)(34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-3.3 COUNSEL FOR THE FLORIDA BAR

(a) **Authority of Board of Governors.** The board may employ staff counsel and bar counsel for The Florida Bar to perform such duties, as may be assigned, under the direction of the executive director.

(b) **Appointment of Bar Counsel.** Staff counsel may designate members of The Florida Bar to serve as bar counsel to represent The Florida Bar in disciplinary proceedings.

(c) **Appointment of Board Members Limited.** A member of the board may represent The Florida Bar on any review proceeding under rule 3-7.7.

(d) **Appointment of Grievance Committee Members Limited.** A member of a grievance committee may represent the bar in any proceeding before a referee and any review by the supreme court under rule 3-7.7 if the case was not considered by the grievance committee on which the member serves.

(e) **Compensation.** Bar counsel may be compensated in accordance with budgetary policies adopted by the board.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); amended November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010.

RULE 3-3.4 GRIEVANCE COMMITTEES

The board will appoint grievance committees as provided in this rule. Each grievance committee has the authority and jurisdiction required to perform the functions assigned to it, which are as follows:

(a) **Circuit Grievance Committees.** The board will appoint at least 1 grievance committee for each judicial circuit of this state and as many more as the board chooses. These committees will be designated as judicial circuit grievance committees, and in circuits having more than 1 committee they will be identified by alphabetical designation in the order of creation. These

committees will be continuing bodies notwithstanding changes in membership, and they will have jurisdiction and the power to proceed in all matters properly before them.

(b) Special Grievance Committees. The board may appoint grievance committees for the purpose of investigations or specific tasks assigned in accordance with these rules. These committees will continue only until the completion of tasks assigned, and they will have jurisdiction and power to proceed in all matters assigned to them. All provisions concerning grievance committees apply to special grievance committees except those concerning terms of office and other restrictions imposed by the board. Any vacancies occurring in such a committee will be filled by the board, and any changes in members will not affect the jurisdiction and power of the committee to proceed in all matters properly before it.

(c) Membership, Appointment, and Eligibility. Each grievance committee will be appointed by the board and must have at least 3 members. At least one-third of the committee members must be nonlawyers. All appointees must be of legal age and, except for special grievance committees, must be residents of the circuit or have their principal office in the circuit. The lawyer members of the committee must have been members of The Florida Bar for at least 5 years.

A member of a grievance committee must not perform any grievance committee function when that member:

- (1) is related by blood or marriage to the complainant or respondent;
- (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
- (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
- (4) is prejudiced or biased toward either the complainant or the respondent.

On notice of the above prohibitions, the affected members should recuse themselves from further proceedings. The grievance committee chair has the power to disqualify any member from any proceeding in which any of the above prohibitions exist and are stated orally on the record or memorialized in writing by the chair.

(d) Terms. The terms of the members are for 1 year from the date of administration of the oath of service on the grievance committee or until their successors are appointed and qualified. Continuous service of a member may not exceed 3 years. A member may not be reappointed for a period of 3 years after the end of the member's term; but, the expiration of a member's term of service does not disqualify the member from concluding any investigation or participating in disposition of cases that were pending before the committee when the member's term expired. A member who continues to serve on the grievance committee under the authority of this subdivision is not counted as a member of the committee when calculating the minimum number of public members required by this rule.

(e) **Officers.** The designated reviewer of the committee will designate a chair and vice-chair who must be members of The Florida Bar.

(f) **Oath.** Each new member of a committee must subscribe to an oath to fulfill the duties of the office. These oaths will be filed with the executive director and placed with the official records of The Florida Bar.

(g) **Removal.** The designated reviewer of a grievance committee or the board of governors may remove any member of a grievance committee from office.

(h) **Grievance Committee Meetings.** Grievance committees should meet at regularly scheduled times, at least once every 3 months, and either the chair or vice-chair may call special meetings. Grievance committees should meet at least monthly during any period when the committee has 1 or more pending cases assigned for investigation and report. The time, date, and place of regular monthly meetings should be set in advance by agreement between the committee and chief branch discipline counsel.

Amended June 8, 1989 (544 So.2d 193); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-3.5 CIRCUIT COURT JURISDICTION

The jurisdiction of the circuit courts is concurrent with that of The Florida Bar under these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter retains jurisdiction to the exclusion of the other forum until the final determination of the cause.

No history provided as of 1/1/10, amended November 9, 2017, effective February 1, 2018 (SC16-1962).

3-4. STANDARDS OF CONDUCT

RULE 3-4.1 NOTICE AND KNOWLEDGE OF RULES; JURISDICTION OVER LAWYERS OF OTHER STATES AND FOREIGN COUNTRIES

Every member of The Florida Bar and every lawyer of another state or foreign country who provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies under this rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this court. Jurisdiction over a lawyer of another state who is not a member of The Florida Bar is limited to conduct as a lawyer in relation to the business for which the lawyer was permitted to practice in this state and the privilege in the future to practice law in the state of Florida. When The Florida Bar disciplines a lawyer that the bar is aware has bar membership in a European Union (E.U.) nation, the bar will notify the appropriate E.U. representative. The bar will use forms adopted by the Council of Laws and Bar Societies of Europe (CCBE) and the Conference of Chief Justices of the United States.

January 1, 2006; due to Hurricane Katrina, emergency motion was filed and court issued opinion changing effective date to Sept 14, 2005; amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 3-4.2 RULES OF PROFESSIONAL CONDUCT

Violation of the Rules of Professional Conduct as adopted by the rules governing The Florida Bar is a cause for discipline.

No history provided in West Law as of 1/1/10.

RULE 3-4.3 MISCONDUCT AND MINOR MISCONDUCT

The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-4.4 CRIMINAL MISCONDUCT

A determination or judgment by a court of competent jurisdiction that a member of The Florida Bar is guilty of any crime or offense that is a felony under the laws of that court's jurisdiction is cause for automatic suspension from the practice of law in Florida, unless the judgment or order is modified or stayed by the Supreme Court of Florida, as provided in these rules. The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for an alleged criminal misdemeanor or felony offense. The board may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the respondent. If a respondent is acquitted in a criminal proceeding that acquittal is not a bar to disciplinary proceedings. Likewise, the findings, judgment, or decree of any court in civil proceedings is not necessarily binding in disciplinary proceedings.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-4.5 REMOVAL FROM JUDICIAL OFFICE BY THE SUPREME COURT OF FLORIDA

Whenever a judge is removed from office by the Supreme Court of Florida on the basis of a Judicial Qualifications Commission proceeding, the removal order, when the record in such

proceedings discloses the appropriate basis, may also order the suspension of the judge as an attorney pending further proceedings hereunder.

When the Judicial Qualifications Commission files a recommendation that a judge be removed from office, The Florida Bar may seek leave to intervene in the proceedings before the Supreme Court of Florida. If intervention is granted, The Florida Bar may seek disciplinary action in the event the judge is removed by the court.

Amended March 23, 2000 (763 So.2d 1002).

RULE 3-4.6 DISCIPLINE BY FOREIGN OR FEDERAL JURISDICTION; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that a lawyer licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action will be considered as conclusive proof of the misconduct in a disciplinary proceeding under this rule.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied are as follows:

- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction will be applied to the conduct.

Amended May 12, 2005, effective Jan. 1, 2006; due to Hurricane Katrina, emergency motion was filed and court issued opinion changing effective date to Sept 14, 200; amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 3-4.7 OATH

Violation of the oath taken by a lawyer to support the constitutions of the United States and the state of Florida is ground for disciplinary action. Membership in, alliance with, or support of any organization, group, or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state is a violation of the oath.

No history provided in West Law as of 1/1/10; amended November 9, 2017, effective February 1, 2018 (SC16-1962)

3-5. TYPES OF DISCIPLINE

RULE 3-5.1 GENERALLY

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

(a) **Admonishments.** A Supreme Court of Florida order finding minor misconduct and adjudging an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, on review of the report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment will be made a part of the record of the proceeding after the admonishment is administered.

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

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

- (A) the misconduct involves misappropriation of a client's funds or property;
- (B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;
- (C) the respondent has been publicly disciplined in the past 3 years;
- (D) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;
- (E) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or
- (F) the misconduct constitutes the commission of a felony under applicable law.

(2) *Discretion of Grievance Committee.* A grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present, despite the presence of 1 or more of the criteria described in subpart (1) of this rule. When the grievance committee recommends an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program under these circumstances, its report will contain a detailed explanation of the circumstances giving rise to the committee's recommendation.

(3) *Recommendation of Minor Misconduct.* If a grievance committee finds the respondent guilty of minor misconduct or if the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee will file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or

administrative fee in the amount of \$1,250 against the respondent. The report recommending an admonishment will be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect in the report, or if the report is not referred to the disciplinary review committee by the designated reviewer [as provided in rule 3-7.5(b)], the report will then be served on the respondent by bar counsel. The report and finding of minor misconduct becomes final unless rejected by the respondent within 15 days after service of the report. If rejected by the respondent, the report will be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct will be given, in writing, to the complainant.

(4) *Rejection of Minor Misconduct Reports.* The rejection by the board of governors of a grievance committee report of minor misconduct, without dismissal of the case, or remand to the grievance committee, is deemed a finding of probable cause. The rejection of a report by a respondent is deemed a finding of probable cause for minor misconduct. At trial before a referee following rejection by a respondent of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct.* A respondent may tender a written admission of minor misconduct to bar counsel or to the grievance committee within 15 days after a finding of probable cause by a grievance committee. An admission of minor misconduct may be conditioned on acceptance by the grievance committee, but the respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or on nonpayment of costs incurred in the proceedings. An admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance committee may consider the admission without further evidentiary hearing and may either reject the admission, affirming its prior action, or accept the admission and issue its report of minor misconduct. If a respondent's admission is accepted by the grievance committee, the respondent may not later reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, the admission may not be considered or used against the respondent in subsequent proceedings.

(c) **Probation.** The respondent may be placed on probation for a stated period of time of not less than 6 months nor more than 5 years or for an indefinite period determined by conditions stated in the order. The judgment will state the conditions of the probation, which may include but are not limited to the following:

- (1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;
- (2) supervision of all or part of the respondent's work by a member of The Florida Bar;
- (3) required reporting to a designated agency;

(4) satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;

(5) supervision over fees and trust accounts as the court directs; or

(6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. The respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar, on failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

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

(e) Suspension. The respondent may be suspended from the practice of law for a period of time to be determined by the conditions imposed by the judgment or order or until further order of the court. During this suspension the respondent continues to be a member of The Florida Bar but without the privilege of practicing. A suspension of 90 days or less does not require proof of rehabilitation or passage of the Florida bar examination and the respondent will become eligible for all privileges of members of The Florida Bar on the expiration of the period of suspension. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the Florida bar examination and the respondent will not become eligible for all privileges of members of The Florida Bar until the court enters an order reinstating the respondent to membership in The Florida Bar. No suspension will be ordered for a specific period of time more than 3 years.

An order or opinion imposing a suspension of 90 days or less will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the end of the term of the suspension and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

An order or opinion imposing a suspension of more than 90 days will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion until the date of the court's order of reinstatement and will provide that the suspension is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients, unless the court orders otherwise.

(f) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the bar. Permanent disbarment precludes readmission. A former member who has not been permanently disbarred may only be admitted again on full compliance with the rules and regulations governing admission to the bar. Except as otherwise provided in these rules, no application for readmission may be tendered within 5 years after the date of disbarment or a longer period ordered by the court in the disbarment order or at any time after that date until all court-ordered restitution and outstanding disciplinary costs have been paid.

Disbarment is the presumed sanction for lawyers found guilty of theft from a lawyer's trust account or special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or trustee. A respondent found guilty of theft will have the opportunity to offer competent, substantial evidence to rebut the presumption that disbarment is appropriate.

Unless waived or modified by the court on motion of the respondent, an order or opinion imposing disbarment will include a provision that prohibits the respondent from accepting new business from the date of the order or opinion and will provide that the disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients.

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or such other period of time in excess of 5 years contained in said order.

(h) Notice to Clients. Unless the court orders otherwise, when the respondent is served with an order of disbarment, disbarment on consent, disciplinary revocation, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent must immediately furnish a copy of the order to:

- (1) all of the respondent's clients with matters pending in the respondent's practice;
- (2) all opposing counsel or co-counsel in the matters listed in (1), above;
- (3) all courts, tribunals, or adjudicative agencies before which the respondent is counsel of record; and
- (4) all state, federal, or administrative bars of which respondent is a member.

Within 30 days after service of the order the respondent must furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

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

(j) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee or that the respondent has converted trust funds or property. The amount of restitution will be specifically set forth in the disciplinary order or agreement and will not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee will not exceed the amount of the fee, or in the case of conversion will not exceed the amount of the conversion established in disciplinary proceedings. The disciplinary order or agreement will also state to whom restitution must be made and the date by which it must be completed. Failure to comply with the order or agreement will cause the respondent to become a delinquent member and will not preclude further proceedings under these rules. The respondent must provide the bar with telephone numbers and current addresses of all individuals or entities to whom the respondent is ordered to pay restitution.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451); Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206) (916 So.2d 655; March 22, 2007, effective June 1, 2007 (SC06-1840) (952 So.2d 1185); December 20, 2007, effective March 1, 2008 (978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 3-5.2 EMERGENCY SUSPENSION AND INTERIM PROBATION OR INTERIM PLACEMENT ON THE INACTIVE LIST FOR INCAPACITY NOT RELATED TO MISCONDUCT

(a) Petition for Emergency Suspension.

(1) *Great Public Harm.* On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if un rebutted, would establish clearly and convincingly that a lawyer appears to be causing great public harm, the Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis.

(2) *Discipline by Foreign Jurisdiction.* On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbarring a lawyer from the practice of

law, the Supreme Court of Florida may issue an order suspending the lawyer on an emergency basis. See subdivision (l) of rule 3-7.2.

A petition for emergency suspension will also constitute a formal complaint. The respondent will have 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for emergency suspension in which to file an answer and any affirmative defenses to the bar's petition.

(b) Petition for Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct. The Supreme Court of Florida may issue an order placing a lawyer on interim probation, under the conditions provided in subdivision (c) of rule 3-5.1 or placing the lawyer on the inactive list for incapacity not related to misconduct as provided in rule 3-7.13. Such order may be issued upon petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that conditions or restrictions on a lawyer's privilege to practice law in Florida are necessary for protection of the public. This petition will also constitute the formal complaint. The respondent will have 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for interim probation in which to file an answer and any affirmative defenses to the bar's petition.

(c) Trust Accounts. Any order of emergency suspension or probation that restricts the attorney in maintaining a trust account will be served on the respondent and any bank or other financial institution maintaining an account against which the respondent may make withdrawals. The order will serve as an injunction to prevent the bank or financial institution from making further payment from the trust account or accounts on any obligation except in accordance with restrictions imposed by the court through subsequent orders issued by a court-appointed referee. Bar counsel will serve a copy of the Supreme Court of Florida's order freezing a lawyer's trust account via first class mail on the bank(s) in which the respondent's trust account is held.

(1) The court's order appointing a referee under this rule may authorize the referee to determine entitlement to funds in the frozen trust account. Any client or third party claiming to be entitled to funds in the frozen trust account must file a petition requesting release of frozen trust account funds with the referee appointed in the case, accompanied by proof of entitlement to the funds.

(2) Bar counsel and bar auditors will provide information to the appointed referee from bar audits and other existing information regarding persons claiming ownership of frozen trust account funds. The bar will notify persons known to bar staff in writing via regular first class mail of their possible interest in funds contained in the frozen trust account. The notices will include a copy of the form of a petition requesting release of frozen trust account funds, to be filed with the referee and instructions for completing the form. The bar will publish, in the local county or city newspaper published where the lawyer practiced before suspension, a notice informing the public that the lawyer's trust account has been frozen and those persons with claims on the funds should contact listed bar counsel within 30 days after publication whenever possible.

(A) If there are no responses to the notices mailed and published by the bar within 90 days from the date of the notice or if the amount in the frozen trust account is over \$100,000, a receiver may be appointed by the referee to determine the person rightfully entitled to the frozen trust funds. The receiver will be paid from the corpus of the trust funds unless the referee orders otherwise.

(B) In all other instances, a referee shall determine who is entitled to funds in the frozen trust account, unless the amount in the frozen trust account is \$5,000 or less and no persons with potential entitlement to frozen trust account funds respond to the bar's mailed or published notices within 90 days from the date of the notice. In such event, the funds will be unfrozen.

(d) Referee Review of Frozen Trust Account Petitions. The referee will determine when and how to pay the claim of any person entitled to funds in the frozen trust account after reviewing the bar's audit report, the lawyer's trust account records, the petitions filed or the receiver's recommendations. If the bar's audit report or other reliable evidence shows that funds have been stolen or misappropriated from the lawyer's trust account, then the referee may hold a hearing. Subchapter 3-7 will not apply to a referee hearing under this rule. No pleadings will be filed, only petitions requesting release of frozen trust account funds. The parties to this referee proceeding will be those persons filing a petition requesting release of frozen trust account funds. The bar will not be a party to the proceeding. The referee's order will be the final order in the matter unless one of the parties petitions for review of the referee's order to the Supreme Court of Florida. The sole issue before the referee will be determination of ownership of the frozen trust account funds. The referee will determine the percentage of monies missing from the respondent's trust account and the amounts owing to those petitioners requesting release of frozen trust account funds. A pro rata distribution is the method of distribution when there are insufficient funds in the account to pay all claims in full. The referee's decision is subject only to direct petition for review of the referee's final order by a party claiming an ownership interest in the frozen trust funds. The petition for review must be filed within 60 days of the referee's final order. The schedule for filing of briefs in the appellate process will be as set forth in subchapter 3-7 of these rules.

(e) Separate Funds in Frozen Trust Accounts. The referee will order return of any separate funds to their rightful owner(s) in full upon their filing a petition requesting release of frozen trust account funds with proof of entitlement to the funds. Separate funds are monies deposited into the respondent's trust account after the misappropriation, which are not affected by the misappropriation, and funds that have been placed into a separate segregated individual trust account under the individual client's tax identification number.

(f) New Cases and Existing Clients. Any order of emergency suspension issued under this rule will immediately preclude the attorney from accepting any new cases and unless otherwise ordered permit the attorney to continue to represent existing clients for only the first 30 days after issuance of an emergency order. Any fees paid to the suspended attorney during the 30-day period will be deposited in a trust account from which withdrawals may be made only in accordance with restrictions imposed by the court.

(g) Motions for Dissolution. The lawyer may move at any time for dissolution or amendment of an emergency order by motion filed with the Supreme Court of Florida, a copy of which will be served on bar counsel. The motion will not stay any other proceedings and applicable time limitations in the case and, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion, will immediately be assigned to a referee designated by the chief justice. The filing of the motion will not stay the operation of an order of emergency suspension or interim probation entered under this rule.

(h) Appointment of Referee. On entry of an order of suspension or interim probation, as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee. On determination that funds have been misappropriated from a lawyer's trust account as provided above, the Supreme Court of Florida will promptly appoint or direct the appointment of a referee.

(i) Hearing on Petition to Terminate or Modify Suspension. The referee will hear a motion to terminate or modify a suspension or interim probation imposed under this rule within 7 days of assignment and submit a report and recommendation to the Supreme Court of Florida within 7 days of the date of the hearing. The referee will recommend dissolution or amendment, whichever is appropriate, to the extent that bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying rule violations.

(j) Successive Motions Prohibited. Successive motions for dissolution will be summarily dismissed by the Supreme Court of Florida to the extent that they raise issues that were or with due diligence could have been raised in a prior motion.

(k) Review by the Supreme Court of Florida. On receipt of the referee's recommended order on the motion for dissolution or amendment, the Supreme Court of Florida will review and act upon the referee's findings and recommendations regarding emergency suspensions and interim probations. This subdivision does not apply to a referee's final order to determine ownership of funds in frozen trust accounts. These final orders of referee are reviewable by the Supreme Court of Florida only if a party timely files a petition for review pursuant to this rule. Briefing schedules following the petition for review will be as set forth in subchapter 3-7 of these rules.

(l) Hearings on Issues Raised in Petitions for Emergency Suspension or Interim Probation and Sanctions. Once the Supreme Court of Florida has granted a petition for emergency suspension or interim probation as set forth in this rule, the referee appointed by the court will hear the matter in the same manner as provided in rule 3-7.6, except that the referee will hear the matter after the lawyer charged has answered the charges in the petition for emergency suspension or interim probation or when the time has expired for filing an answer. The referee will issue a final report and recommendation within 90 days of appointment. If the time limit specified in this subdivision is not met, that portion of an emergency order imposing a suspension or interim probation will be automatically dissolved, except upon order of the Supreme Court of Florida, provided that any other appropriate disciplinary action on the underlying conduct still may be taken.

(m) Proceedings in the Supreme Court of Florida. Consideration of the referee's report and recommendation regarding emergency suspension and interim probation will be expedited in the Supreme Court of Florida. If oral argument is granted, the chief justice will schedule oral argument as soon as practicable.

(n) Waiver of Time Limits. The respondent may at any time waive the time requirements set forth in this rule by written request made to and approved by the referee assigned to hear the matter.

Former Rule 3-5.1(g) redesignated as new Rule 3-5.2 and amended Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); amended June 29, 2006, effective August 1, 2006 (SC05-1684) (933 So.2d 498). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 3-5.3 DIVERSION OF DISCIPLINARY CASES TO PRACTICE AND PROFESSIONALISM ENHANCEMENT PROGRAMS

(a) Authority of Board. The board of governors is hereby authorized to establish practice and professionalism enhancement programs to which eligible disciplinary cases may be diverted as an alternative to disciplinary sanction.

(b) Types of Disciplinary Cases Eligible for Diversion. Disciplinary cases that otherwise would be disposed of by a finding of minor misconduct or by a finding of no probable cause with a letter of advice are eligible for diversion to practice and professionalism enhancement programs.

(c) Limitation on Diversion. A respondent who has been the subject of a prior diversion is not eligible for diversion for the same type of rule violation for a period of 5 years after the earlier diversion. However, a respondent who has been the subject of a prior diversion and then is alleged to have violated a completely different type of rule at least 1 year after the initial diversion, will be eligible for a practice and professionalism enhancement program.

(d) Approval of Diversion of Cases at Staff or Grievance Committee Level Investigations. The bar shall not offer a respondent the opportunity to divert a disciplinary case that is pending at staff or grievance committee level investigations to a practice and professionalism enhancement program unless staff counsel, the grievance committee chair, and the designated reviewer concur.

(e) Contents of Diversion Recommendation. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall state the practice and professionalism enhancement program(s) to which the respondent shall be diverted, shall state the general purpose for the diversion, and the costs thereof to be paid by the respondent.

(f) Service of Recommendation on and Review by Respondent. If a diversion recommendation is approved as provided in subdivision (d), the recommendation shall be served on the respondent who may accept or reject a diversion recommendation in the same manner as provided for review of recommendations of minor misconduct. The respondent shall not have

the right to reject any specific requirement of a practice and professionalism enhancement program.

(g) Effect of Rejection of Recommendation by Respondent. In the event that a respondent rejects a diversion recommendation the matter shall be returned for further proceedings under these rules.

(h) Diversion at Trial Level.

(1) *Agreement of the Parties.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if the bar approves diversion and the respondent agrees. The procedures for approval of conditional pleas provided elsewhere in these rules shall apply to diversion at the trial level.

(2) *After Submission of Evidence.* A referee may recommend diversion of a disciplinary case to a practice and professionalism enhancement program if, after submission of evidence, but before a finding of guilt, the referee determines that, if proven, the conduct alleged to have been committed by the respondent is not more serious than minor misconduct.

(3) *Costs of Practice and Professionalism Enhancement Program.* A referee's recommendation of diversion to a practice and professionalism enhancement program shall state the costs thereof to be paid by the respondent.

(4) *Appeal of Diversion Recommendation.* The respondent and the bar shall have the right to appeal a referee's recommendation of diversion, except in the case of diversion agreed to under subdivision (h)(1).

(5) *Authority of Referee to Refer a Matter to a Practice and Professionalism Enhancement Program.* Nothing in this rule shall preclude a referee from referring a disciplinary matter to a practice and professionalism enhancement program as a part of a disciplinary sanction.

(i) Effect of Diversion. When the recommendation of diversion becomes final, the respondent shall enter the practice and professionalism enhancement program(s) and complete the requirements thereof. Upon respondent's entry into a practice and professionalism enhancement program, the bar shall terminate its investigation into the matter and its disciplinary files shall be closed indicating the diversion. Diversion into the practice and professionalism enhancement program shall not constitute a disciplinary sanction.

(j) Effect of Completion of the Practice and Professionalism Enhancement Program. If a respondent successfully completes all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, the bar's file shall remain closed.

(k) Effect of Failure to Complete the Practice and Professionalism Enhancement Program. If a respondent fails to fully complete all requirements of the practice and professionalism enhancement program(s) to which the respondent was diverted, including the payment of costs thereof, the bar may reopen its disciplinary file and conduct further proceedings

under these rules. Failure to complete the practice and professionalism enhancement program shall be considered as a matter of aggravation when imposing a disciplinary sanction.

(l) Costs of Practice and Professionalism Enhancement Programs. The Florida Bar shall annually determine the costs of practice and professionalism enhancement programs and publish the amount of the costs thereof that shall be assessed against and paid by a respondent.

Comment

As to subdivision (c) of 3-5.3, a lawyer who agreed to attend the Advertising Workshop in 1 year would not be eligible for another such diversion for an advertising violation for a period of 5 years following the first diversion. However, that same lawyer would be eligible to attend the Advertising Workshop 1 year and a Trust Account Workshop for a completely different violation 1 year after the first diversion is completed.

Added Oct. 20, 1994 (644 So.2d 282). Amended April 25, 2002 (820 So.2d 210); May 20, 2004, (SC03-705) (875 So.2d 448). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 3-5.4 PUBLICATION OF DISCIPLINE

(a) Nature of Sanctions. All disciplinary sanctions, as defined in rules 3-5.1 and 3-5.2, or their predecessors, of these Rules Regulating The Florida Bar in disciplinary cases opened after March 16, 1990 are public information. Admonishments for minor misconduct entered in disciplinary cases opened on or before March 16, 1990 are confidential.

(b) Disclosure on Inquiry. All public disciplinary sanctions will be disclosed on inquiry.

(c) Manner of Publication. Unless otherwise directed by the court, and subject to the exceptions set forth below, all public disciplinary sanctions may be published for public information in print or electronic media.

(d) Limited Exception for Admonishments Issued by the Supreme Court of Florida. All admonishments issued by the court containing the heading “Not to be Published” will not be published in the official court reporter and will not be published in *The Florida Bar News*.

“Not to be Published” does not have the same meaning as “confidential.” The Florida Bar may post information regarding specific orders of admonishment on the bar’s website. Further, The Florida Bar may provide information regarding an admonishment on inquiry.

Comment

All disciplinary sanctions as defined in rules 3-5.1 and 3-5.2, or their predecessors, entered in cases opened on or after March 17, 1990 are public information. Therefore, an inquiry into the conduct of a member of the bar will result in a disclosure of all these sanctions.

The public policy of this state is to provide reasonable means of access to public information. In furtherance of this policy, this rule is enacted so that all persons may understand

what public information concerning lawyer disciplinary sanctions is available and in what format. This rule does not alter current court procedure or other requirements.

Admonishments are issued for minor misconduct and are the lowest form of disciplinary sanction. An admonishment is often issued for technical rule violations or for rule violations that did not result in harm. The court's orders imposing admonishments contain the heading "Not to be Published" and this rule directs that those admonishments not be published in Southern Reporter and directs The Florida Bar not to publish those admonishments in its newspaper, The Florida Bar News. The court does so in order to maintain a tangible difference between the sanctions of admonishment and public reprimand.

This rule does not bar disclosure of admonishments in response to an inquiry, whether written, oral, or electronic, and does not bar publication of admonishments on any website of The Florida Bar.

New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

3-6. EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

RULE 3-6.1 GENERALLY

(a) Authorization and Application. Except as limited in this rule, persons or entities providing legal services may employ suspended lawyers and former lawyers who have been disbarred or whose disciplinary resignations or disciplinary revocations have been granted by the Florida Supreme Court [for purposes of this rule such lawyers and former lawyers are referred to as "individual(s) subject to this rule"] to perform those services that may ethically be performed by nonlawyers employed by authorized business entities.

An individual subject to this rule is considered employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor providing services to the entity.

(b) Employment by Former Subordinates Prohibited for a Period of 3 Years. An individual subject to this rule may not, for a period of 3 years from the entry of the order pursuant to which the suspension, disciplinary revocation, or disbarment became effective, or until the individual is reinstated or readmitted to the practice of law, whichever occurs sooner, be employed by or work under the supervision of another lawyer who was supervised by the individual at the time of or subsequent to the acts giving rise to the order.

(c) Notice of Employment Required. Before employment commences, the entity must provide The Florida Bar with a notice of employment and a detailed description of the intended services to be provided by the individual subject to this rule.

(d) Prohibited Conduct.

(1) *Direct Client Contact.* Individuals subject to this rule must not have direct contact with any client. Direct client contact does not include the participation of the individual as

an observer in any meeting, hearing, or interaction between a supervising lawyer and a client.

(2) *Trust Funds or Property.* Individuals subject to this rule must not receive, disburse, or otherwise handle trust funds or property.

(3) *Practice of Law.* Individuals subject to this rule must not engage in conduct that constitutes the practice of law and such individuals must not hold themselves out as being eligible to do so.

(e) Quarterly Reports by Individual and Employer Required. The individual subject to this rule and employer must submit sworn information reports to The Florida Bar. Such reports must be filed quarterly, based on the calendar year, and include statements that no aspect of the work of the individual subject to this rule has involved the unlicensed practice of law, that the individual subject to this rule has had no direct client contact, that the individual subject to this rule did not receive, disburse, or otherwise handle trust funds or property, and that the individual subject to this rule is not being supervised by a lawyer whom the individual subject to this rule supervised within the 3 years immediately previous to the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation.

Amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (SC03-705), (875 So.2d 448), corrected opinion issued July 7, 2004; October 6, 2005, effective Jan. 1 2006 (SC05-206), (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

3-7. PROCEDURES

RULE 3-7.1 CONFIDENTIALITY

(a) Scope of Confidentiality. All records including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those disciplinary matters conducted in circuit courts, are property of The Florida Bar. All of those matters are confidential and will not be disclosed except as provided in these rules. When disclosure is permitted under these rules, it will be limited to information concerning the status of the proceedings and any information that is part of the public record as defined in these rules.

Unless otherwise ordered by this court or the referee in proceedings under these rules, nothing in these rules prohibits the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules, or from disclosing any documents or correspondence served on or provided to those persons except where disclosure is prohibited in Chapter 4 of these rules or by statutes and caselaw regarding attorney-client privilege.

(1) *Pending Investigations.* Disciplinary matters pending at the initial investigatory and grievance committee levels are treated as confidential by The Florida Bar, except as provided in rules 3-7.1(e) and (k).

(2) *Minor Misconduct Cases.* Any case in which a finding of minor misconduct has been entered by action of the grievance committee or board is public information.

(3) *Probable Cause Cases.* Any disciplinary case in which a finding of probable cause for further disciplinary proceedings has been entered is public information. For purposes of this subdivision a finding of probable cause is deemed in those cases authorized by rule 3-3.2(a), for the filing of a formal complaint without the requirement of a finding of probable cause.

(4) *No Probable Cause Cases.* Any disciplinary case that has been concluded by a finding of no probable cause for further disciplinary proceedings is public information.

(5) *Diversion or Referral to Grievance Mediation Program.* Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation program is public information on the entry of such a recommendation.

(6) *Contempt Cases.* Contempt proceedings authorized elsewhere in these rules are public information even if the underlying disciplinary matter is confidential as defined in these rules.

(7) *Incapacity Not Involving Misconduct.* Proceedings for placement on the inactive list for incapacity not involving misconduct are public information on the filing of the petition with the Supreme Court of Florida.

(8) *Petition for Emergency Suspension or Probation.* Proceedings seeking a petition for emergency suspension or probation are public information.

(9) *Proceedings on Determination or Adjudication of Guilt of Criminal Misconduct.* Proceedings on determination or adjudication of guilt of criminal misconduct, as provided elsewhere in these rules, are public information.

(10) *Professional Misconduct in Foreign Jurisdiction.* Proceedings based on disciplinary sanctions entered by a foreign court or other authorized disciplinary agency, as provided elsewhere in these rules, are public information.

(11) *Reinstatement Proceedings.* Reinstatement proceedings, as provided elsewhere in these rules, are public information.

(12) *Disciplinary Resignations and Disciplinary Revocations.* Proceedings involving petitions for disciplinary resignation or for disciplinary revocation as provided elsewhere in these rules, are public information.

(b) Public Record. The public record consists of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, recordings, and/or transcripts of hearings furnished to, served on, or received from the respondent or the complainant.

(c) Circuit Court Proceedings. Proceedings under rule 3-3.5 are public information.

(d) Limitations on Disclosure. Any material provided to The Florida Bar that is confidential under applicable law will remain confidential and will not be disclosed except as authorized by the applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida.

The procedure for maintaining the required confidentiality is set forth in subdivision (m) below.

(e) Response to Inquiry. Authorized representatives of The Florida Bar will respond to specific inquiries concerning matters that are in the public domain, but otherwise confidential under the rules, by acknowledging the status of the proceedings.

(f) Notice to Law Firms. When a disciplinary file is opened the respondent must disclose to the respondent's current law firm and, if different, the respondent's law firm at the time of the act or acts giving rise to the complaint, the fact that a disciplinary file has been opened. Disclosure must be in writing and in the following form:

A complaint of unethical conduct against me has been filed with The Florida Bar. The nature of the allegations are _____. This notice is provided pursuant to rule 3-7.1(f) of the Rules Regulating The Florida Bar.

The notice must be provided within 15 days of notice that a disciplinary file has been opened and a copy of the above notice must be served on The Florida Bar.

(g) Production of Disciplinary Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the public record, even if the disciplinary proceeding is confidential under these rules. The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(h) Notice to Judges. Any judge of a court of record upon inquiry of the judge will be advised and, absent an inquiry, may be advised as to the status of a confidential disciplinary case and may be provided with a copy of documents in the file that would be part of the public record if the case was not confidential. The judge must maintain the confidentiality of the records and not otherwise disclose the status of the case.

(i) Evidence of Crime. The confidential nature of these proceedings does not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

(j) Chemical Dependency and Psychological Treatment. That a lawyer has voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems is confidential and will not be admitted as evidence in disciplinary proceedings under these rules unless agreed to by the attorney who sought the treatment.

For purposes of this subdivision, a lawyer is deemed to have voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems if the lawyer was not under compulsion of law or rule to do so, or if the treatment is not a part of conditional admission to The Florida Bar or of a disciplinary sanction imposed under these rules.

It is the purpose of this subdivision to encourage lawyers to voluntarily seek advice, counsel, and treatment available to lawyers, without fear that the fact it is sought or rendered will or might cause embarrassment in any future disciplinary matter.

(k) Response to False or Misleading Statements. If public statements that are false or misleading are made about any otherwise confidential disciplinary case, The Florida Bar may disclose all information necessary to correct such false or misleading statements.

(l) Disclosure by Waiver of Respondent. Upon written waiver executed by a respondent, The Florida Bar may disclose the status of otherwise confidential disciplinary proceedings and provide copies of the public record to:

(1) the Florida Board of Bar Examiners or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of an applicant for admission to practice law in that jurisdiction; or

(2) Florida judicial nominating commissions or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of a candidate for judicial office; or

(3) The Florida Bar Board of Legal Specialization and Education and any of its certification committees for the purpose of evaluating the character and fitness of a candidate for board certification or recertification; or

(4) the governor of the State of Florida for the purpose of evaluating the character and fitness of a nominee to judicial office.

(m) Maintaining Confidentiality Required by Rule or Law. The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Jud. Admin 2.420. It will be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that such documents or information contain material that is exempt from disclosure under applicable rule or law and to request that such exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

Amended Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971); March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004 (875 So.2d 448); October 6, 2005, effective Jan. 1, 2006 (916 So.2d 655); July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

**RULE 3-7.2 PROCEDURES ON CRIMINAL OR PROFESSIONAL MISCONDUCT;
DISCIPLINE ON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL
MISCONDUCT; DISCIPLINE ON REMOVAL FROM JUDICIAL OFFICE**

(a) Definitions.

(1) *Judgment of Guilt.* For the purposes of these rules, “judgment of guilt” includes only those cases in which the trial court in the criminal proceeding enters an order adjudicating the respondent guilty of the offense(s) charged.

(2) *Determination of Guilt.* For the purposes of these rules, “determination of guilt” includes those cases in which the trial court in the criminal proceeding enters an order withholding adjudication of the respondent’s guilt of the offense(s) charged, those cases in which the convicted lawyer has entered a plea of guilty to criminal charges, those cases in which the convicted lawyer has entered a no contest plea to criminal charges, those cases in which the jury has rendered a verdict of guilty of criminal charges, and those cases in which the trial judge in a bench trial has rendered a verdict of guilty of criminal charges.

(3) *Convicted Lawyer.* For the purposes of these rules, “convicted lawyer” means a lawyer who has had either a determination or judgment of guilt entered by the trial court in the criminal proceeding.

(b) Determination or Judgment of Guilt, Admissibility; Proof of Guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction on trial of or plea to any crime under the laws of this state, or under the laws under which any other court making the determination or entering the judgment exercises its jurisdiction, is admissible in proceedings under these rules and is conclusive proof of guilt of the criminal offense(s) charged for the purposes of these rules.

(c) Notice of Institution of Felony Criminal Charges. Any member of The Florida Bar who is the subject of a felony criminal charge must notify the executive director of The Florida Bar of the charges within 10 days of the filing of the indictment or information and include a copy of the indictment or information.

If the state attorney whose office is assigned to a felony criminal case is aware that the defendant is a member of The Florida Bar, the state attorney must provide a copy of the indictment or information to the executive director.

(d) Notice of Determination or Judgment of Guilt of Felony Charges.

(1) *Trial Judge.* The trial judge must provide a certified copy of the determination or judgment of guilt of a felony offense to the executive director of The Florida Bar within 10 days of its entry.

(2) *Clerk of Court.* The clerk of that court must provide a certified copy of the determination or judgment of guilt of a felony offense to the executive director within 10 days of its entry.

(3) *State Attorney*. The state attorney whose office is assigned that case must provide a copy of the documents evidencing the determination or judgment of guilt of a felony offense to the executive director if the state attorney is aware that the defendant is a member of The Florida Bar.

(e) Notice of Self-Reporting by Members of Determination or Judgment of Guilt of All Criminal Charges. A member of The Florida Bar must provide a copy of the document(s) entering a determination or judgment for any criminal offense against that member entered on or after August 1, 2006 to the executive director within 10 days of its entry.

(f) Suspension by Judgment of Guilt (Felonies). The Florida Bar will file a “Notice of Determination or Judgment of Guilt” or a consent judgment for disbarment or disciplinary revocation in the Supreme Court of Florida on receiving notice that a member of the bar has been determined to be or adjudicated guilty of a felony. A copy of the document(s) on which the determination or judgment is based must be attached to the notice. The respondent is suspended as a member of The Florida Bar as defined in rule 3-5.1(e) on filing of the notice with the Supreme Court of Florida and service of the notice on the respondent.

(g) Petition to Modify or Terminate Suspension. The respondent may file a petition with the Supreme Court of Florida to modify or terminate suspension at any time after the filing of a notice of determination or judgment of guilt. The respondent must serve a copy of the petition on the executive director. The suspension imposed under the authority of this rule will not be stayed by filing a petition to modify or terminate suspension.

(h) Appointment of Referee. The Supreme Court of Florida will promptly appoint or direct the appointment of a referee on the entry of an order of suspension as provided above.

(1) *Hearing on Petition to Terminate or Modify Suspension.* The referee must hear a petition to terminate or modify a suspension imposed under this rule within 7 days of appointment and submit a report and recommendation to the Supreme Court of Florida within 7 days of the date of the hearing. The referee will recommend termination or modification of the suspension only if the suspended member can demonstrate that the member is not the convicted person or that the criminal offense is not a felony.

(2) *Hearing on Sanctions.* The referee may also hear argument concerning the appropriate sanction to be imposed and file a report and recommendation with the supreme court in the same manner and form as provided in rule 3-7.6(m) of these rules. The hearing must be held and a report and recommendation filed with the supreme court within 90 days of assignment as referee.

The respondent may challenge the imposition of a sanction only on the grounds of mistaken identity or whether the conduct involved constitutes a felony under applicable law. The respondent may present relevant character evidence and relevant matters of mitigation regarding the proper sanction to be imposed. The respondent cannot contest the findings of guilt in the criminal proceedings. A respondent who entered a plea in the criminal proceedings is allowed to explain the circumstances concerning the entry of the plea for purposes of mitigation.

The report and recommendations of the referee may be reviewed in the same manner as provided in rule 3-7.7 of these rules.

(i) Appeal of Conviction. The suspension will remain in effect during any appeal of the determination or judgment of guilt of a felony offense in the criminal proceeding. The suspension will remain in effect until the final disposition of the criminal cause if remanded for further proceedings and until the respondent's civil rights have been restored and the respondent has been reinstated unless modified or terminated by the Supreme Court of Florida as elsewhere provided.

(j) Expunction. The Supreme Court of Florida may expunge a sanction entered under this rule when a final disposition of the criminal cause has resulted in acquittal or dismissal on motion of the respondent. A respondent who is the subject of a sanction that is expunged under this rule may lawfully deny or fail to acknowledge the sanction, except when the respondent is a candidate for election or appointment to judicial office, or as otherwise required by law.

(k) Waiver of Time Limits. The respondent may waive the time requirements set forth in this rule by written request made to and approved by the referee or supreme court.

(l) Professional Misconduct in Foreign Jurisdiction.

(1) *Notice of Discipline by a Foreign Jurisdiction.* A member of The Florida Bar must file a copy of any order or judgment by a court or other authorized disciplinary agency of another state or by a federal court effecting a disciplinary resignation, disciplinary revocation, disbarment, or suspension or any other surrender of the member's license to practice law in lieu of discipline with the Supreme Court of Florida and the executive director of The Florida Bar within 30 days of its effective date.

(2) *Effect of Adjudication or Discipline by a Foreign Jurisdiction.* The Supreme Court of Florida may issue an order suspending the member who is the subject of the final adjudication on an emergency basis petition of The Florida Bar attaching a copy of the final adjudication by a foreign court or disciplinary authority. All of the conditions not in conflict with this rule applicable to issuance of emergency suspension orders elsewhere within these Rules Regulating The Florida Bar are applicable to orders entered under this rule.

(m) Discipline on Removal from Judicial Office.

(1) *Notice of Removal.* The clerk of the Supreme Court of Florida will forward a copy of any order removing a member of The Florida Bar from judicial office for judicial misconduct to the executive director of The Florida Bar.

(2) *Filing of Formal Complaint.* The Florida Bar may file a formal complaint with the Supreme Court of Florida and seek appropriate discipline on receipt of an order removing a member from judicial office for judicial misconduct.

(3) *Admissibility of Order; Conclusive Proof of Facts.* The order of removal is admissible in proceedings under these rules and is conclusive proof of the facts on which the judicial misconduct was found by the Supreme Court of Florida.

(4) *Determination of Lawyer Misconduct.* The issue of whether the facts establishing the judicial misconduct also support a finding of lawyer misconduct are determined by the referee based on the record of the proceedings.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); May 12, 2005, effective January 1, 2006 (907 So.2d 1138); June 29, 2006, effective August 1, 2006 (SC05-1684) (933 So.2d 498); April 5, 2007 (SC07-460) (954 So.2d 15); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES

(a) Screening of Inquiries. Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. If bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under these rules, bar counsel may, with the consent of the complainant and respondent, refer the matter to The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14. If bar counsel determines that the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline, bar counsel may decline to pursue the inquiry. A decision by bar counsel not to pursue an inquiry shall not preclude further action or review under the Rules Regulating The Florida Bar. The complainant and respondent shall be notified of a decision not to pursue an inquiry and shall be given the reasons therefor.

(b) Complaint Processing and Bar Counsel Investigation. If bar counsel decides to pursue an inquiry, a disciplinary file shall be opened and the inquiry shall be considered as a complaint, if the form requirement of subdivision (c) is met. Bar counsel shall investigate the allegations contained in the complaint.

(c) Form for Complaints. All complaints, except those initiated by The Florida Bar, shall be in writing and under oath. The complaint shall contain a statement providing:

Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.

(d) Dismissal of Disciplinary Cases. Bar counsel may dismiss disciplinary cases if, after complete investigation, bar counsel determines that the facts show that the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel shall not preclude further action or review under the Rules Regulating The Florida Bar. Nothing in these rules shall preclude bar counsel from obtaining the concurrence of the grievance committee chair on the dismissal of a case or on dismissal of the case with issuance of a letter of advice as described elsewhere in these Rules Regulating The Florida Bar. If a disciplinary case is dismissed, the complainant shall be notified of the dismissal and shall be given the reasons therefor.

(e) Diversion to Practice and Professionalism Enhancement Programs. Bar counsel may recommend diversion of disciplinary cases as provided elsewhere in these rules if, after

complete investigation, bar counsel determines that the facts show that the respondent's conduct did not constitute disciplinary violations more severe than minor misconduct.

(f) Referral to Grievance Committees. Bar counsel may refer disciplinary cases to a grievance committee for its further investigation or action as authorized elsewhere in these rules. Bar counsel may recommend specific action on a case referred to a grievance committee.

(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff. When bar counsel does not pursue an inquiry or dismisses a disciplinary case, such action shall be deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become public information.

Added March 16, 1990, effective March 17, 1990 (558 So.2d 1008); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective October 1, 1998 (718 So.2d 1179); amended ; July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. When notice of a grievance committee hearing is sent to the respondent, such notice shall be accompanied by a list of the grievance committee members.

(b) Complaint Filed With Grievance Committee. A complaint received by a committee direct from a complainant shall be reported to the appropriate bar counsel for docketing and assignment of a case number, unless the committee resolves the complaint within 10 days after receipt of the complaint. A written report to bar counsel shall include the following information: complainant's name and address, respondent's name, date complaint received by committee, copy of complaint letter or summary of the oral complaint made, and the name of the committee member assigned to the investigation. Formal investigation by a grievance committee may proceed after the matter has been referred to bar counsel for docketing.

(c) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by bar counsel whether based upon a written complaint or not.

(d) Conduct of Proceedings. The proceedings of grievance committees may be informal in nature and the committees shall not be bound by the rules of evidence.

(e) No Delay for Civil or Criminal Proceedings. An investigation shall not be deferred or suspended without the approval of the board even though the respondent is made a party to civil litigation or is a defendant or is acquitted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation.

(f) Counsel and Investigators. Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investigation. Bar counsel shall assist each grievance committee in carrying out its investigative and administrative duties and shall prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of

probable cause, no probable cause, recommended discipline for minor misconduct, and letters of advice after no probable cause findings.

(g) Quorum, Panels, and Vote.

(1) *Quorum.* Three members of the committee, 2 of whom must be lawyers, shall constitute a quorum.

(2) *Panels.* The grievance committee may be divided into panels of not fewer than 3 members, 2 of whom must be lawyers. Division of the grievance committee into panels shall only be upon concurrence of the designated reviewer and the chair of the grievance committee. The 3-member panel shall elect 1 of its lawyer members to preside over the panel's actions. If the chair or vice-chair is a member of a 3-member panel, the chair or vice-chair shall be the presiding officer.

(3) *Vote.* All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members. There shall be no required minimum number of lawyer members voting in order to satisfy the requirements of this rule. The number of committee members voting for or against the committee report shall be recorded. Minority reports may be filed. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or minor misconduct is made, the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

(i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. Unless it is found to be impractical by the chair of the grievance committee due to unreasonable delay or other good cause, the complainant shall be granted the right to be present at any grievance committee hearing when the respondent is present before the committee. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution, will excuse the completion of an investigation. The complaining witness shall have no right to appeal.

(j) Finding of No Probable Cause.

(1) *Authority of Grievance Committee.* A grievance committee may terminate an investigation by finding that no probable cause exists to believe that the respondent has violated these rules. The committee may issue a letter of advice to the respondent in connection with the finding of no probable cause.

(2) *Notice of Committee Action.* Bar counsel shall notify the respondent and complainant of the action of the committee.

(3) *Effect of No Probable Cause Finding.* A finding of no probable cause by a grievance committee shall not preclude the reopening of the case and further proceedings therein.

(4) *Disposition of Committee Files.* Upon the termination of the grievance committee's investigation, the committee's file shall be forwarded to bar counsel for disposition in accord with established bar policy.

(k) Letter Reports in No Probable Cause Cases. Upon a finding of no probable cause, bar counsel will submit a letter report of the no probable cause finding to the complainant, presiding member, investigating member, and the respondent, including any documentation deemed appropriate by bar counsel and explaining why the complaint did not warrant further proceedings. Letters of advice issued by a grievance committee in connection with findings of no probable cause shall be signed by the presiding member of the committee. Letter reports and letters of advice shall not constitute a disciplinary sanction.

(l) Preparation, Forwarding, and Review of Grievance Committee Complaints. If a grievance committee or the board of governors finds probable cause, the bar counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be approved by the member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes accordingly. If bar counsel does not agree with the changes, the matter shall be referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or is not returned to the grievance committee for further action, the formal complaint shall be promptly forwarded to and reviewed by staff counsel. Staff counsel shall file the formal complaint and furnish a copy to the respondent. Staff counsel shall request the Chief Justice of the Supreme Court of Florida to assign a referee or to order the chief judge of the appropriate circuit to assign a referee to try the cause. A copy of the record shall be made available to the respondent at the respondent's expense.

If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action.

(m) Recommendation of Admonishment for Minor Misconduct. If the committee recommends an admonishment for minor misconduct, the grievance committee report shall be drafted by bar counsel and signed by the presiding member. The committee report need only

include: (1) the committee's recommendations regarding the admonishment, revocation of certification, and conditions of recertification; (2) the committee's recommendation as to the method of administration of the admonishment; (3) a summary of any additional charges that will be dismissed if the admonishment is approved; (4) any comment on mitigating, aggravating, or evidentiary matters that the committee believes will be helpful to the board in passing upon the admonishment recommendation; and (5) an admission of minor misconduct signed by the respondent, if the respondent has admitted guilt to minor misconduct. No record need be submitted with such a report. After the presiding member signs the grievance committee report, the report shall be returned to bar counsel. The report recommending an admonishment shall be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect therein, or if the designated reviewer does not present the same to the disciplinary review committee for action by the board, the report shall then be served on the respondent by bar counsel.

(n) Rejection of Admonishment. The order of admonishment shall become final unless rejected by the respondent within 15 days after service upon the respondent. If rejected by the respondent, the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause.

(o) Recommendation of Diversion to Remedial Programs. A grievance committee may recommend, as an alternative to issuing a finding of minor misconduct or no probable cause with a letter of advice, diversion of the disciplinary case to a practice and professionalism enhancement program as provided elsewhere in these rules. A respondent may reject the diversion recommendation in the same manner as provided in the rules applicable to rejection of findings of minor misconduct. In the event that a respondent rejects a recommendation of diversion, the matter shall be returned to the committee for further proceedings.

Former Rule 3-7.3 renumbered as Rule 3-7.4 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. Notice of grievance committee action recommending either diversion to a practice and professionalism enhancement program or finding no probable cause, no probable cause with a letter of advice, minor misconduct, or probable cause will be given to the designated reviewer for review. The designated reviewer may request grievance committee reconsideration or refer the matter to the disciplinary review committee of the board of governors within 30 days of notice of grievance committee action. The request for grievance committee reconsideration or referral to the disciplinary review committee must be in writing and must be submitted to bar counsel. For purposes of this subdivision letters, memoranda, handwritten notes, facsimile documents, and e-mail constitute communication "in writing."

(1) *Requests for Grievance Committee Reconsideration.* If the designated reviewer requests grievance committee reconsideration, bar counsel forwards the request to the chair of the grievance committee and gives notice to the respondent and complainant that the request has been made. If the grievance committee agrees to reconsider the matter, the rule prescribing procedures before a grievance committee applies.

(2) *Referrals to Disciplinary Review Committee and Board of Governors.* If the designated reviewer refers the matter to the disciplinary review committee, bar counsel prepares and submits a discipline agenda item for consideration by the committee. Bar counsel must give notice to respondent and complainant that the designated reviewer has made the referral for review.

(3) *Nature of Disciplinary Review Committee and Board of Governors Review.* The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any review on referral from a designated reviewer is consultation on pending litigation and is not subject to intervention by persons outside the relationship between the bar and its counsel.

(4) *Effect of Failure to Timely Make the Request for Reconsideration or Referral for Review.* If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the grievance committee action becomes final.

(5) *Authority of Designated Reviewer to Make Recommendations.* When the designated reviewer makes a request for reconsideration or referral for review, the designated reviewer may recommend:

- (A) referral of the matter to the grievance mediation program;
- (B) referral of the matter to the fee arbitration program;
- (C) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (D) closure of the disciplinary file by the entry of a finding of no probable cause;
- (E) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (F) a finding of minor misconduct; or
- (G) a finding of probable cause that further disciplinary proceedings are warranted.

(b) Review of Grievance Committee Matters. The disciplinary review committee reviews those grievance committee matters referred to it by a designated reviewer and reports to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee is final unless overruled by the board. Recommendations of the disciplinary review committee may include:

- (1) referral of the matter to the grievance mediation program;
- (2) referral of the matter to the fee arbitration program;
- (3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6) a finding of minor misconduct; or
- (7) a finding of probable cause that further disciplinary proceedings are warranted.

(c) Board Action on Review of Designated Reviewer Recommendations. On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part. Action by the board may include:

- (1) referral of the matter to the grievance mediation program;
- (2) referral of the matter to the fee arbitration program;
- (3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6) a finding of minor misconduct; or
- (7) a finding of probable cause that further disciplinary proceedings are warranted.

(d) Notice of Board Action. Bar counsel must give notice of board action to the respondent, complainant, and grievance committee.

(e) Finding of No Probable Cause. A finding of no probable cause by the board is final and no further proceedings may be conducted in the matter by The Florida Bar unless a reason arises at a later time to re-open the file.

(f) Control of Proceedings. Bar counsel, however appointed, is subject to the direction of the board at all times. The board, in the exercise of its discretion as the governing body of The Florida Bar, has the power to terminate disciplinary proceedings before a referee prior to the receipt of evidence by the referee, whether these proceedings have been instituted on a finding of probable cause by the board or a grievance committee.

(g) Filing Service on Board of Governors. All matters to be filed with or served on the board must be addressed to the board of governors and filed with the executive director.

(h) Custodian of Bar Records. The executive director or his designees are the custodians of the official records of The Florida Bar.

Former Rule 3-7.4 renumbered as Rule 3-7.5 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); July 23, 1992, amended, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); May 20, 2004 - amended (SC03-705); corrected opinion issued July 7, 2004; (875 So.2d 448; December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); amended July 7, 2011, effective October 1, 2011 (SC10-1968), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees.

(1) *Appointment.* The chief justice shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. Such appointees shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

(2) *Minimum Qualifications.* To be eligible for appointment as a referee under this rule the judge must have previously served as a judicial referee in proceedings instituted under these rules before February 1, 2010, at 12:01 a.m., or must have received the referee training materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed.

(b) Trial by Referee. When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

(c) Pretrial Conference. Within 60 days of the order assigning the case to the referee, the referee shall conduct a pretrial conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court of Florida; provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, Complainant, v.(name of respondent)....., Respondent," and "In The Supreme Court of Florida (Before a Referee)."

(f) Nature of Proceedings.

(1) *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(g) Bar Counsel. Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned.

(h) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance.*

(A) Filing. The complaint shall be filed in the Supreme Court of Florida.

(B) Content. The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

(C) Joinder of Charges and Respondents; Severance. A complaint may embrace any number of charges against 1 or more respondents, and charges may be against any 1 or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.

(2) *Answer and Motion.* The respondent shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint.

(3) *Reply.* If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(4) *Disposition of Motions.* Hearings upon motions may be deferred until the final hearing, and, whenever heard, rulings thereon may be reserved until termination of the final hearing.

(5) *Filing and Service of Pleadings.*

(A) Prior to Appointment of Referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made.

On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

(B) *After Appointment of Referee.* All pleadings, motions, notices, and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on staff counsel and bar counsel of The Florida Bar and on all interested parties to the proceedings.

(6) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(7) *Expediting the Trial.* If it shall be made to appear that the date of final hearing should be expedited in the public interest, the referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule.

(8) *Disqualification of Referee.* A referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of a disqualification, the chief judge of the appropriate circuit shall appoint a successor referee from that same circuit.

(i) **Notice of Final Hearing.** The cause may be set down for trial by either party or the referee upon not less than 10 days' notice. The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent's answer, or if no answer is filed, then from the date when such answer is due.

(j) **The Respondent.** Unless the respondent claims a privilege or right properly available under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent is subpoenaed to appear and give testimony or to produce books, papers, or documents and refuses to answer or to produce such books, papers, or documents, or, having been duly sworn to testify, refuses to answer any proper question, the respondent may be cited for contempt of the court.

(k) **Complaining Witness.** The complaining witness is not a party to the disciplinary proceeding, and shall have no rights other than those of any other witness. However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the referee may grant the complaining witness the right to be present at any hearing when the respondent is also present. A complaining witness may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial. The complaining witness shall have no right to appeal.

(l) **Parol Evidence.** Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract may be used only if necessary to resolve issues of excessive fees or excessive costs.

(m) **Referee's Report.**

(1) *Contents of Report.* Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

(A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding;

(B) recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures;

(C) recommendations as to the disciplinary measures to be applied;

(D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

(E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed.

(2) *Filing.* The referee's report and record of proceedings shall in all cases be transmitted together to the Supreme Court of Florida. Copies of the report shall be served on the parties including staff counsel. Bar counsel will make a copy of the record, as furnished, available to other parties on request and payment of the actual costs of reproduction. The report of referee and record shall not be filed until the time for filing a motion to assess costs has expired and no motion has been filed or, if the motion was timely filed, until the motion has been considered and a ruling entered.

(n) The Record.

(1) *Recording of Testimony.* All hearings at which testimony is presented shall be attended by a court reporter who shall record all testimony. Transcripts of such testimony are not required to be filed in the matter, unless requested by a party, who shall pay the cost of transcription directly, or ordered by the referee, in which case the costs thereof are subject to assessment as elsewhere provided in these rules.

(2) *Contents.* The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(3) *Preparation and Filing.* The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the index of the record

on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(4) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(o) Plea of Guilty by Respondent. At any time during the progress of disciplinary proceedings, a respondent may tender a plea of guilty.

(1) *Before Filing of Complaint.* If the plea is tendered before filing of a complaint by staff counsel, such plea shall be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint.* If the complaint has been filed against the respondent, the respondent may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial. Such referee shall take such testimony thereto as may be advised, following which the referee will enter a report as otherwise provided.

(3) *Unconditional.* An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure.* Except as herein provided, all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

(p) Cost of Review or Reproduction.

(1) The charge for reproduction, when photocopying or other reproduction is performed by the bar, for the purposes of these rules shall be as determined and published annually by the executive director. In addition to reproduction charges, the bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings and identification of documents to be reproduced.

(2) When the bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in the possession of the bar, the bar may decline to reproduce the documents in the offices of the bar and shall inform the requesting person of the following options:

(A) purchase of the transcripts from the court reporter service that produced them;

(B) purchase of the documents from the third party from whom the bar received them; or

(C) designation of a commercial photocopy service to which the bar shall deliver the original documents to be copied, at the requesting party's expense, provided the photocopy service agrees to preserve and return the original documents and not to release them to any person without the bar's consent.

(q) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings shall 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 of the respondent 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 shall have discretion to award costs and, absent an abuse of discretion, the referee's award shall not be reversed.

(3) *Assessment of Bar Costs.* When the bar is successful, in whole or in part, the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Respondent's Costs.* When the bar is unsuccessful in the prosecution of a particular matter, the referee may assess the respondent's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar.

(5) *Time for Filing Motion to Assess Costs.* A party shall file a statement of costs incurred in a referee proceeding and a request for payment of same within 15 days after written notice by the referee that the report of referee has been completed or at the time that a guilty plea for consent judgment is filed. Failure to timely file a motion, without good cause, shall be considered as a waiver of the right to request reimbursement of costs or to object to a request for reimbursement of costs. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Because costs may not be assessed against the respondent unless the bar is successful in some part

and because costs may not be assessed against the bar unless the referee finds the lack of a justiciable issue of law or fact, this subdivision shall not be construed to require the filing of a motion to assess costs before the referee when doing so is not appropriate.

Court Comment

A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.

Comment

Provisions for assessment of costs in proceedings before the Supreme Court of Florida are addressed in rule 3-7.7.

Amended April 20, 1989 (542 So.2d 982). Renumbered as Rule 3-7.6 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Amended Feb. 13, 1992 (594 So.2d 735); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009, effective February 1, 2010, (SC08-1890), (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court of Florida in the following manner:

(a) Right of Review.

(1) Any party to a proceeding may procure review of a report of a referee or a judgment, or any specified portion thereof, entered under these rules.

(2) The Supreme Court of Florida shall review all reports and judgments of referees recommending probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings.

(3) A referee's report that does not recommend probation, public reprimand, suspension, disbarment, or resignation pending disciplinary proceedings, shall be final if not appealed.

(b) Appointment of Bar Counsel. The board or staff counsel, if authorized by the board, may appoint new or additional bar counsel to represent The Florida Bar on any review.

(c) Procedure for Review. Review by the Supreme Court of Florida shall be in accordance with the following procedures:

(1) *Notice of Intent to Seek Review of Report of Referee.* A party to a bar disciplinary proceeding wishing to seek review of a report of referee shall give notice of such intent within 60 days of the date on which the referee's report is docketed by the Clerk of the Supreme Court of Florida. Prompt written notice of the board's action, if any, shall be communicated to the respondent. The proceeding shall be commenced by filing with the Supreme Court of Florida notice of intent to seek review of a report of referee, specifying those portions of the report of a referee sought to be reviewed. Within 20 days after service of such notice of intent to seek review, the opposing party may file a cross-notice for review specifying any additional portion of the report that said party desires to be reviewed. The filing of such notice or cross-notice shall be jurisdictional as to a review to be procured as a matter of right, but the court may, in its discretion, consider a late-filed notice or cross-notice upon a showing of good cause.

(2) *Record on Review.* The report and record filed by the referee shall constitute the record on review. If hearings were held at which testimony was heard, but no transcripts thereof were filed in the matter, the party seeking review shall order preparation of all such transcripts, file the original thereof with the court, and serve copies on the opposing party, on or before the time of filing of the initial brief, as provided elsewhere in this rule. The party seeking review shall be responsible for, and pay directly to the court reporter, the cost of preparation of transcripts. Failure to timely file and serve all of such transcripts may be cause for dismissal of the party's petition for review.

(3) *Briefs.* The party first seeking review shall file a brief in support of the notice of intent to seek review within 30 days of the filing of the notice. The opposing party shall file an answer brief within 20 days after the service of the initial brief of the party seeking review, which answer brief shall also support any cross-notice for review. The party originally seeking review may file a reply brief within 20 days after the service of the answer brief. The cross-reply brief, if any, shall be served within 20 days thereafter. Computation of time for filing briefs under this rule shall follow the applicable Florida Rules of Appellate Procedure. The form, length, binding, type, and margin requirements of briefs filed under this rule shall follow the requirements of Fla. R. App. P 9.210.

(4) *Oral Argument.* Request for oral argument may be filed in any case wherein a party files a notice of intent to seek review at the time of filing the first brief. If no request is filed, the case will be disposed of without oral argument unless the court orders otherwise.

(5) *Burden.* Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee sought to be reviewed is erroneous, unlawful, or unjustified.

(6) *Judgment of Supreme Court of Florida.*

(A) *Authority.* After review, the Supreme Court of Florida shall enter an appropriate order or judgment. If no review is sought of a report of a referee entered under the rules and filed in the court, the findings of fact shall be deemed conclusive and the disciplinary measure recommended by the referee shall be the disciplinary measure imposed by the court, unless the court directs the parties to submit briefs or

oral argument directed to the suitability of the disciplinary measure recommended by the referee. A referee's report that becomes final when no review has been timely filed shall be reported in an order of the Supreme Court of Florida.

(B) *Form.* The judgment of the court shall include, where appropriate, judgment in favor of:

- (i) the party to whom costs are awarded;
- (ii) the person(s) to whom restitution is ordered; or
- (iii) the person(s) to whom a fee is ordered to be forfeited.

(7) *Procedures on Motions to Tax Costs.* The court may consider a motion to assess costs if the motion is filed within 10 days of the entry of the court's order or opinion where the referee finds the respondent not guilty at trial and the supreme court, upon review, finds the respondent guilty of at least 1 rule violation and does not remand the case to the referee for further proceedings or where the respondent was found guilty at trial and the supreme court, upon review, finds the respondent not guilty of any rule violation. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Failure to timely file a petition for costs or to timely serve an objection, without good cause, shall be considered a waiver of request or objection to the costs and the court may enter an order without further proceedings. If an objection is timely filed, or the court otherwise directs, the motion shall be remanded to the referee. Upon remand, the referee shall file a supplemental report that shall include a statement of costs incurred and the manner in which the costs should be assessed. Any party may seek review of the supplemental report of referee in the same manner as provided for in this rule for other reports of the referee.

(d) Precedence of Proceedings. Notices of intent to seek review in disciplinary proceedings shall take precedence over all other civil causes in the Supreme Court of Florida.

(e) Extraordinary Writs. All applications for extraordinary writs that are concerned with disciplinary proceedings under these rules of discipline shall be made to the Supreme Court of Florida.

(f) Florida Rules of Appellate Procedure. To the extent necessary to implement this rule and if not inconsistent herewith, the Florida Rules of Appellate Procedure shall be applicable to notices of intent to seek review in disciplinary proceedings, provided service on The Florida Bar shall be accomplished by service on bar counsel and staff counsel.

(g) Contempt by Respondent. Whenever it is alleged that a respondent is in contempt in a disciplinary proceeding, a petition for an order to show cause why the respondent should not be held in contempt and the proceedings on such petition may be filed in and determined by the Supreme Court of Florida or as provided under rule 3-7.11(f).

(h) Pending Disciplinary Cases. If disbarment or disciplinary revocation is ordered by the court, dismissal without prejudice of other pending cases against the respondent may be ordered in the court's disbarment or disciplinary revocation order.

Comment

Subdivision (c)(7) of this rule applies to situations which arise when a referee finds a respondent not guilty but the supreme court, on review, finds the respondent guilty and does not remand the case back to the referee for further proceedings. See, e.g., *The Florida Bar v. Pape*, 918 So.2d 240 (Fla. 2005). A similar situation may also occur where a respondent is found guilty at trial, but not guilty by the supreme court on review of the referee's report and recommendation.

Former Rule 3-7.6 renumbered as Rule 3-7.7 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); November 19, 2009, effective February 1, 2010, SC08-1890, (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 3-7.8 PROCEDURES BEFORE A CIRCUIT COURT

(a) Filing of Motion. Whenever it shall be made known to any of the judges of the district courts of appeal or any judge of a circuit court or a county court in this state that a member of The Florida Bar practicing in any of the courts of the district or judicial circuit or county has been guilty of any unprofessional act as defined by these rules, such judge may direct the state attorney for the circuit in which the alleged offense occurred to make in writing a motion in the name of the State of Florida to discipline such attorney, setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined.

(b) Copy Served Upon Respondent. Upon the filing of a motion in circuit court to discipline an attorney, a copy thereof shall be served upon the respondent attorney, and the respondent shall, within 20 days after the service thereof, file an answer thereto. A copy of such motion shall be filed with the executive director of The Florida Bar at the time of service upon the respondent.

(c) Trial Before a Circuit Judge. Upon the filing of the answer, the chief judge of the judicial circuit in which the alleged offense occurred shall designate a judge other than the judge who directed the filing of the motion to try said cause. Such judge shall conduct a hearing thereon and shall hear the evidence to be offered by the State of Florida and the respondent. A representative or representatives of The Florida Bar, appointed by the board, shall have the right to be present and to observe the proceedings. Upon the conclusion of the hearing, the judge shall enter such judgment of dismissal, reprimand, probation, suspension, or disbarment as shall be appropriate to the circumstances. The parties shall be entitled to compulsory process to force the attendance of any witnesses.

(d) Judgment Filed in Supreme Court of Florida. If the judgment be one of public reprimand, probation, suspension, or disbarment, 3 certified copies of the same shall be forthwith filed by the clerk of the trial court with the clerk of the Supreme Court of Florida. The clerk of

the Supreme Court of Florida shall retain one copy for the court's records, deliver to the executive director of The Florida Bar one copy of the judgment for The Florida Bar's official records, and shall forthwith serve the third copy upon the respondent.

(e) Petition for Appellate Review. The respondent may appeal from a judgment entered by a circuit court. Such appeal shall be made in the manner provided by rule 3-7.7.

(f) Duty to Expedite Proceedings. It shall be the duty of the state attorney who is directed to file said motion to file the same promptly and to dispose of said controversy expeditiously.

(g) Readmission or Reinstatement. Readmission or reinstatement of attorneys disbarred or suspended by proceedings in circuit courts shall be governed as elsewhere provided in these rules.

(h) Reporting Misconduct to The Florida Bar. Nothing herein shall be construed to discourage or restrict the right and responsibility of a judge to refer to The Florida Bar the conduct of its members, which in the opinion of the judge, warrants investigation to determine if a violation of the Rules of Professional Conduct has occurred.

Former Rule 3-7.7 renumbered as Rule 3-7.8 March 16, 1990, effective March 17, 1990 (558 So.2d 1008).
Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-7.9 CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. If before a formal complaint is filed a respondent states a desire to plead guilty, bar counsel shall consult established board guidelines for discipline and confer with the designated reviewer. If bar counsel or the designated reviewer rejects the proposed consent judgment, the matter shall not be referred to the board of governors. If bar counsel and the designated reviewer approve the proposed consent judgment, the respondent shall be advised that bar counsel and the designated reviewer will recommend approval of the respondent's written plea, and the matter shall be placed on the agenda of the board of governors for its review. If the board of governors concurs in the consent judgment, bar counsel shall notify the respondent and file all necessary pleadings to secure approval of the plea. If a proposed consent judgment is rejected, bar counsel shall prepare and file a complaint as provided elsewhere in these rules.

(b) After Filing of Formal Complaint. If a respondent states a desire to plead guilty to a formal complaint that has been filed, staff counsel shall consult established board guidelines for discipline and confer with the designated reviewer. If staff counsel or the designated reviewer rejects the proposed consent judgment, the plea shall not be filed with the referee. If staff counsel and the designated reviewer approve the proposed consent judgment, the respondent shall be advised that staff counsel and the designated reviewer will recommend approval of the respondent's written plea and the consent judgment shall be filed with the referee. If the referee accepts the consent judgment, the referee shall enter a report and file same with the court as provided elsewhere in these rules. If the referee rejects the consent judgment, the matter shall proceed as provided in this chapter.

(c) Approval of Consent Judgments. Acceptance of any proposed consent judgment shall be conditioned on final approval by the Supreme Court of Florida, and the court's order will recite the disciplinary charges against the respondent.

(d) Content of Conditional Pleas. All conditional pleas shall show clearly by reference or otherwise the disciplinary offenses to which the plea is made. All conditional pleas in which the respondent agrees to the imposition of a suspension or disbarment shall include an acknowledgment that, unless waived or modified by the court on motion of the respondent, the court order accepting the conditional plea will contain a provision that prohibits the respondent from accepting new business from the date of the order or opinion and shall provide that the suspension or disbarment is effective 30 days from the date of the order or opinion so that the respondent may close out the practice of law and protect the interests of existing clients. A conditional plea may not permit a respondent to begin serving a suspension or disbarment until the Supreme Court of Florida issues an order or opinion approving the recommended discipline.

(e) Disbarment on Consent. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent shall have the same effect as, and shall be governed by, the same rules provided for disbarment elsewhere in these Rules Regulating The Florida Bar.

Matters involving disbarment on consent shall be processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these Rules Regulating The Florida Bar, except that a respondent may enter into a disbarment on consent without admitting any of the facts or rule violations alleged by the bar. In such event, the disbarment on consent shall set forth a brief recitation of the allegations underlying the disbarment on consent. This option shall only be available for disbarments on consent and not for any other type of consent judgment.

(f) Effect of Pleas on Certification. In negotiating consent judgments with a respondent or in recommending acceptance, rejection, or offer of a tendered consent judgment, staff counsel and designated reviewer shall consider and express a recommendation on whether the consent judgment shall include revocation of certification if held by the attorney and restrictions to be placed on recertification in such areas. When certification revocation is agreed to in a consent judgment, the revocation and any conditions on recertification will be reported to the legal specialization and education director for recording purposes.

Former Rule 3-7.8 renumbered as Rule 3-7.9 March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655); March 22, 2007, effective June 1, 2007 (SC06-1840), (952 So.2d 1185). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

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 must be verified by the petitioner and filed with the Supreme Court of Florida in compliance with the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration. A copy must be served on staff counsel, The Florida Bar, in compliance with applicable court rules. The petition for reinstatement may not be filed until the petitioner has completed at least 80% of the term of that lawyer's period of suspension.

(2) *Form and Exhibits.* The petition must be in the form and accompanied by the exhibits provided for elsewhere in this rule. The information required concerning the petitioner may include any or all of the following matters in addition to any other matters that 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 related 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 other matters 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 the amount 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 referral 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 lawyer's duty is to appear at the hearings and to prepare and present to the referee evidence that, in the opinion of the referee or lawyer, will be considered in passing on 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 referee must decide the fitness of the petitioner to resume the practice of law. In making this determination, 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 is 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 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 adversely reflects on 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 will 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 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 provided proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination (MPRE). A petitioner must have proof of passing all these required portions of the bar examination before that petitioner may file a petition for reinstatement under this subdivision.

(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 of the hearing will be provided at least 10 days prior to the hearing to the petitioner, to lawyers representing The Florida Bar, and to other persons who may be designated by the appointed referee.

(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 the 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 any relevant evidence, 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 on the payment of all or part of the costs of the proceeding and on 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, if suspension or incapacity of the petitioner has continued for more than 3 years, the reinstatement may be conditioned on proof of competency as may be required by the judgment in the discretion of the Supreme Court of Florida. 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 on 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 on a showing of compliance with specified conditions.

(2) *Style of Petition.* Petitions must be styled in the Supreme Court of Florida and filed with the Supreme Court of Florida in accordance with the court's filing requirements, including e-filing requirements where applicable. A copy must be served on Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

(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 on 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 these disciplinary proceedings or of the trial judge, complaining witnesses, and prosecuting lawyer, if suspension was based on 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 these relations and employments;

(E) a statement showing the approximate monthly earnings and other income of the petitioner and the sources from which all earnings and income were derived during this period;

(F) a statement showing all residences maintained during this 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, for each 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 these records;

(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 these 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 this 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.* On 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 other persons 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 the proposed reinstatement on 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 or Revocation.* A lawyer's petition for disciplinary resignation or revocation 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. 2d994, 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).

Former Rule 3-7.9 renumbered as Rule 3-7.10 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Oct. 20, 1994 (644 So.2d 282); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206) (916 So.2d 655). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 3-7.11 GENERAL RULE OF PROCEDURE

(a) Time is Directory. Except as provided in this rule, the time intervals required are directory only and are not jurisdictional. Failure to observe these directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court of Florida, but will not prejudice the offending party, except where provided.

(b) Process. Every member of The Florida Bar must notify The Florida Bar of any change of mailing address, e-mail address (unless the lawyer has been excused by The Florida Bar or the Supreme Court of Florida from e-filing and e-service), and military status. The Florida Bar may serve notice of formal complaints in bar proceedings by certified U.S. Postal Service mail return receipt requested to the bar member’s record bar address unless the Supreme Court of Florida directs other service. Every lawyer of another state who is admitted pro hac vice in a specific case before a court of record in Florida may be served by certified U.S. Postal Service mail return receipt requested addressed to the lawyer in care of the Florida lawyer who was associated or appeared with the lawyer admitted pro hac vice or addressed to the Florida lawyer at any address listed by the lawyer in the pleadings in the case.

Service of process and notices must be directed to counsel whenever a person is represented by counsel.

(c) Notice in Lieu of Process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court of Florida and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings. The Florida Bar will serve the complaint on the respondent by certified U.S. Postal Service mail return receipt

requested to the respondent's record bar address or a more current address that may be known to the person serving the complaint.

When the respondent is represented by counsel in a referee proceeding, The Florida Bar will serve the formal complaint by certified U.S Postal Service mail return receipt requested to the record bar address of the respondent's counsel or a more current address that may be known to the person serving the complaint.

All other correspondence between The Florida Bar and respondents or their counsel, including bar inquiries that require responses during the investigative stage of a disciplinary proceeding, may be made by e-mail to the respondent's record bar e-mail address or the record bar e-mail address of respondent's counsel. E-mail correspondence is encouraged in all instances except in service of a formal complaint or subpoena, or where a court directs otherwise. If a lawyer has been excused by The Florida Bar or a court from e-filing and e-service or service cannot be made by e-mail, service by first class U.S. postal service mail is sufficient, except where these rules or a court direct otherwise.

(d) Issuance of Subpoenas. Subpoenas for witnesses' attendance and the production of documentary evidence, except before a circuit court, must be issued as follows.

(1) *Referees.* Subpoenas for witnesses' attendance and production of documentary evidence before a referee must be issued by the referee and must be served either in the manner provided by law for the service of process or by an investigator employed by The Florida Bar.

(2) *Grievance Committees.* Subpoenas for witnesses' attendance and the production of documentary evidence must be issued by the chair or vice-chair of a grievance committee as part of an investigation authorized by the committee. These subpoenas may be served by any member of the grievance committee, by an investigator employed by The Florida Bar, or in the manner provided by law for service of process.

(3) *Bar Counsel Investigations.* Subpoenas for witnesses' attendance and the production of documentary evidence before bar counsel in an initial investigation must be issued by the chair or vice-chair of a grievance committee to which the matter will be assigned, if appropriate. These subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

(4) *After Grievance Committee Action, But Before Appointment of Referee.* Subpoenas for witnesses' attendance and the production of documentary evidence before bar counsel when conducting further investigation after action by a grievance committee, but before appointment of a referee, must be issued by the chair or vice-chair of the grievance committee to which the matter was assigned. These subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for service of process.

(5) *Board of Governors.* Subpoenas for witnesses' and the production of documentary evidence before the board of governors must be issued by the executive director and must be

served by an investigator employed by The Florida Bar or in the manner provided by law for service of process.

(6) *Confidential Proceedings.* If the proceeding is confidential, a subpoena must not name the respondent but must style the proceeding as “Confidential Proceeding by The Florida Bar under the Rules of Discipline.”

(7) *Contempt.*

(A) Generally. Any persons who, without adequate excuse, fail to obey a subpoena served on them under these rules may be cited for contempt of the Supreme Court of Florida in the manner provided by this rule.

(B) Subpoenas for Trust Accounting Records. Members of the bar are under an obligation to maintain trust accounting records as required by these rules and, as a condition of the privilege of practicing law in Florida, may not assert any privilege personal to the lawyer that may be applicable to production of these records in any disciplinary proceedings under these rules.

(i) A respondent who has been found in willful noncompliance with a subpoena for trust accounting records may be cited for contempt under this rule only if the disciplinary agency that issued the subpoena has found that no good cause existed for the respondent’s failure to comply.

(ii) The disciplinary agency that issued the subpoena must hear the issue of noncompliance and issue findings on the noncompliance within 30 days of a request for issuance of the notice of noncompliance.

(8) *Assistance to Other Lawyer Disciplinary Jurisdictions.* On receipt of a subpoena certified to be issued under the rules or laws of another lawyer disciplinary jurisdiction, the executive director may issue a subpoena directing a person domiciled or found within the state of Florida to give testimony or produce documents or other evidence for use in the other jurisdiction’s lawyer disciplinary proceedings as directed in the subpoena of the other jurisdiction. The practice and procedure applicable to subpoenas issued under this subdivision will be that of the other jurisdiction, except that:

(A) the testimony or production must be only in the county in which the person resides or is employed, or as otherwise fixed by the executive director for good cause shown; and

(B) compliance with any subpoena issued pursuant to this subdivision and contempt for failure in this respect must be sought under these rules.

(e) **Oath of Witness.** Every witness in every proceeding under these rules must be sworn to tell the truth. Violation of this oath is an act of contempt of the Supreme Court of Florida.

(f) Contempt. When a disciplinary agency, as defined elsewhere in these rules, finds that a person is in contempt under these rules, that person may be cited for contempt in the following manner.

(1) *Generally.*

(A) Petition for Contempt and Order to Show Cause. When a person is found in contempt by a disciplinary agency, bar counsel must file a petition for contempt and order to show cause with the Supreme Court of Florida.

(B) Order to Show Cause; Suspension for Noncompliance with Subpoena for Trust Accounting Records. On review of a petition for contempt and order to show cause, the Supreme Court of Florida may issue an order directing the person to show cause why the person should not be held in contempt and appropriate sanctions imposed.

The Supreme Court of Florida may also issue an order suspending the respondent from the practice of law in Florida until the member fully complies with the subpoena and any further order of the Supreme Court of Florida.

The order of the Supreme Court of Florida must fix a time for a response.

(C) Response to Order to Show Cause.

(i) Generally. Any member subject to an order to show cause must file a response as directed by the Supreme Court of Florida.

(ii) Noncompliance with a Subpoena for Trust Account Records. Any member subject to an order to show cause for noncompliance with a subpoena for trust accounting records may request the Supreme Court of Florida:

a. to withhold entry of an order of suspension, if filed within 10 days of the filing of the petition for contempt and order to show cause, or another time the Supreme Court of Florida may direct in the order to show cause; or

b. to terminate or modify the order of suspension at any time after the order of suspension is issued. The Supreme Court of Florida may terminate, modify, or withhold entry of an order of suspension if the member establishes good cause for failure to comply with the subpoena for trust account records.

(D) Failure to Respond to Order to Show Cause. On failure to timely respond to an order to show cause, the matters alleged in the petition are deemed admitted and the Supreme Court of Florida may enter a judgment of contempt and impose appropriate sanctions. Failure to respond may be an additional basis for the Supreme Court of Florida to enter a judgment of contempt and to impose sanctions.

(E) Reply of The Florida Bar. When a timely response to an order to show cause is filed, The Florida Bar will have 10 days, or another time period as the Supreme Court of Florida may order, from the date of filing to file a reply.

(F) Supreme Court of Florida Action. The Supreme Court of Florida will review the matter and issue an appropriate judgment after the time to respond to an order to show cause has expired and no response is timely filed, or after the reply of The Florida Bar has been filed, or the time has expired without any filing. This judgment may include any sanction that a court may impose for contempt and, if the person found in contempt is a member of The Florida Bar, may include any disciplinary sanction authorized under these rules.

If the Supreme Court of Florida requires factual findings, it may direct appointment of a referee as provided in these rules. Proceedings for contempt referred to a referee must be processed in the same manner as disciplinary proceedings under these rules, including, but not limited to, the procedures provided in these rules for conditional guilty pleas for consent judgments. If the Supreme Court of Florida determines it necessary to refer a request to terminate, modify, or withhold entry of an order of suspension based on a petition for contempt and order to show cause for noncompliance with a subpoena for trust account records to a referee for receipt of evidence, the referee proceedings must be expedited and conducted in the same manner as proceedings before a referee on a petition to terminate, modify, or withhold an order of emergency suspension, as provided in these rules.

(G) Preparation and Filing of Report of Referee and Record. The referee must prepare and file a report and the record in cases brought under this rule. The procedures provided for in the rule on procedure before a referee under these rules apply to the preparation, filing, and review of the record.

(H) Appellate Review of Report of Referee. Any party to the contempt proceedings may seek review of the report of referee in the manner provided in these rules for appellate review of disciplinary proceedings.

(2) Failure to Respond to Official Bar Inquiries.

(A) Petition for Contempt and Order to Show Cause. When a respondent is found in contempt by a disciplinary agency for failure to respond to an official bar inquiry without good cause shown, bar counsel must file a petition for contempt and order to show cause with the Supreme Court of Florida.

(B) Response to Petition for Contempt and Order to Show Cause. The respondent will have 10 days from the date of filing of a petition authorized by this subdivision to file a response.

(C) Supreme Court of Florida Action.

(i) Entry of Suspension Order. The Supreme Court of Florida will enter an order suspending the respondent for failure to respond to an official bar inquiry after the respondent files a response to the order to show cause or the time for filing a response has expired, unless it orders otherwise.

(ii) **Assignment to Referee.** If the Supreme Court of Florida requires factual findings, it may direct appointment of a referee as provided in these rules. Proceedings for contempt referred to a referee must be processed in the same manner as disciplinary proceedings under these rules, including, but not limited to, the provisions provided for conditional guilty pleas for consent judgments.

(g) Court Reporters. Court reporters who are employees of The Florida Bar may be appointed to report any disciplinary proceeding. If the respondent objects at least 48 hours in advance of the matter to be recorded, an independent contract reporter may be retained. Reasonable costs for independent court reporter service will be taxed to the respondent for payment to The Florida Bar.

(h) Disqualification as Trier and Lawyer Due to Conflict.

(1) *Representation Prohibited.* Lawyers may not represent a party other than The Florida Bar in disciplinary proceedings authorized by these rules if they are:

(A) currently serving on a grievance committee or the board of governors;

(B) employees of The Florida Bar; or

(C) former members of a grievance committee, former members of the board of governors, or former employees of The Florida Bar if personally involved to any degree in the matter while a member of a grievance committee or the board of governors, or while an employee of The Florida Bar.

(2) *Representation Permitted With Consent by the Board of Governors.* Lawyers may represent a party other than The Florida Bar in disciplinary proceedings authorized by these rules only after receiving consent from the executive director or board of governors if they are:

(A) former members of a grievance committee, former members of the board of governors, or former employees of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the lawyer seeks to be a representative and who did not serve in a supervisory capacity over the matter within 1 year of the service or employment;

(B) a partner, associate, employer, or employee of a member of a grievance committee or a member of the board of governors; or

(C) a partner, associate, employer, or employee of a former member of a grievance committee or a former member of the board of governors within 1 year of the former member's service on the grievance committee or board of governors.

(i) Proceedings after Disbarment. The respondent may consent to or the Supreme Court of Florida may order further proceedings after disbarment, which may include: an audit of trust, operating, or personal bank accounts, the cost of which may be assessed as provided in these

rules; a requirement that the respondent provide a financial affidavit attesting to personal and business finances; and maintenance of a current mailing address for a stated period of time.

Former Rule 3-7.10 amended June 8, 1989 (544 So.2d 193). Renumbered as Rule 3-7.11 and amended March 16, 1990, effective March 17, 1990 (558 So.2d 1008); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); May 20, 2004 (SC03-705) (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009 SC08-1890, (34 Fla.L.Weekly S628a), effective February 1, 2010. Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 3-7.12 DISCIPLINARY RESIGNATION FROM THE FLORIDA BAR SUNSETTED 1-1-06

Former Rule 3-7.11 renumbered as Rule 3-7.12 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 17, 1997 (697 So.2d 115); Feb. 8, 2001 (795 So.2d 1); Deleted October 6, 2005, effective January 1, 2006.

RULE 3-7.12. DISCIPLINARY REVOCATION OF ADMISSION TO THE FLORIDA BAR

If a disciplinary agency is investigating the conduct of a lawyer, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and a petition for disciplinary revocation may be filed pursuant to this rule. Disciplinary revocation is tantamount to disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. A lawyer may seek disciplinary revocation of admission to The Florida Bar during the progress of disciplinary proceedings in the following manner:

(a) Petition for Disciplinary Revocation. The petition for disciplinary revocation shall be styled “In re(respondent’s name).....,” titled “Petition for Disciplinary Revocation,” filed with the Supreme Court of Florida and shall contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. The statement shall describe the charges made or those under investigation for professional misconduct, results of past proceedings, and the status of pending investigations and proceedings. The petition shall state whether it is with or without leave to apply for readmission to the bar. A copy of the petition shall be served upon the executive director of The Florida Bar.

(b) Judgment. Within 60 days after filing and service of the petition, The Florida Bar shall file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary revocation. The bar’s response shall be determined by the bar’s board of governors. A copy of the response shall be served upon the petitioner. The Supreme Court of Florida shall consider the petition, any response, and the charges against the petitioner. The Supreme Court of Florida may enter judgment granting disciplinary revocation if it has been shown by the petitioner in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition and that such will neither adversely affect the integrity of the courts nor hinder the administration of justice nor the confidence of the public in

the legal profession. If otherwise, the petition shall be denied. If the judgment grants the disciplinary revocation, the judgment may require that the disciplinary revocation be subject to appropriate conditions. Such conditions may include, but shall not be limited to, requiring the petitioner to submit to a full audit of all client trust accounts, to execute a financial affidavit attesting to current personal and professional financial circumstances, and to maintain a current mailing address with the bar for a period of 5 years after the disciplinary revocation becomes final or such other time as the court may order.

(c) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation shall not stay the progress of the disciplinary proceedings without the approval of the bar's board of governors.

(d) Dismissal of Pending Disciplinary Cases. If disciplinary revocation is granted by the Supreme Court of Florida under this rule, such disciplinary revocation shall serve to dismiss all pending disciplinary cases.

(e) Costs of Pending Disciplinary Cases. The judgment of the court granting disciplinary revocation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary cases against the respondent. Such costs shall be of the types and amounts authorized elsewhere in these Rules Regulating The Florida Bar.

Comment

The disciplinary revocation rule replaces the former disciplinary resignation rule, but with added safeguards. Disciplinary revocation is allowed for a minimum of 5 years up to permanent disciplinary revocation. The bar's response to all such petitions must be determined by the bar's board of governors. Disciplinary revocation, like the formerly allowed disciplinary resignation, is "tantamount to disbarment." *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000). Like disbarred lawyers, lawyers whose licenses have been revoked pursuant to disciplinary revocation still remain subject to the continuing jurisdiction of the Supreme Court of Florida and must meet all requirements for readmission to bar membership. *The Florida Bar v. Ross*, 732 So.2d 1037, 1041 (Fla. 1998); *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. 2000).

Added April 12, 2012, effective July 1, 2012 (SC10-1967)

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.

Former Rule 3-7.12 renumbered as Rule 3-7.13 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); March 23, 2000 (763 So.2d 1002); November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 3-7.14 FLORIDA STATUTES SUPERSEDED

These Rules of Discipline shall supersede such parts of sections 454.18, 454.31, and 454.32, Florida Statutes (1991), as are in conflict herewith.

Former Rule 3-7.13 renumbered as Rule 3-7.14 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 3-7.15 RESERVED FOR FUTURE USE

Former Rule 3-7.14 renumbered as Rule 3-7.15 March 16, 1990, effective March 17, 1990 (558 So.2d 1008). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 3-7.16 LIMITATION ON TIME TO OPEN INVESTIGATION

(a) Time for Initiating Investigation of Complaints and Re-opened Cases.

(1) *Initial Complaint or Investigation.* A complainant must make a written inquiry to The Florida Bar within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered. The Florida Bar must open an investigation initiated by The Florida Bar within 6 years from the time the matter giving rise to the investigation is discovered or, with due diligence, should have been discovered.

(2) *Re-opened Investigations.* A re-opened disciplinary investigation is not time barred by this rule if the investigation is re-opened within 1 year after the date on which the matter was closed, except that a re-opened investigation based on a deferral made in accordance with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar is not barred if re-opened within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which the deferral was based.

(3) *Deferred Investigations.* A disciplinary investigation which began with the opening of a discipline file and bar inquiries to a respondent within the 6-year time period as described in this rule and was then deferred in accordance with bar policy and the Rules Regulating The Florida Bar, is not time barred under this rule if a grievance committee finds probable cause and the bar files its formal complaint within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which deferral was based.

(b) Exception for Theft or Conviction of a Felony Criminal Offense. There is no limit on the time in which to present, reopen, or bring a matter alleging theft or conviction of a felony criminal offense by a member of The Florida Bar.

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. The limitation of time in which to bring or reopen a complaint within this rule is tolled where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint.

(d) Constitutional Officers. Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.

Added July 20, 1995 (658 So.2d 930). Amended effective March 23, 2000 (763 So.2d 1002); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91), amended November 9, 2017, effective February 1, 2018.

RULE 3-7.17 VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a) Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process, including the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies.

(b) Authority of the Court. The Supreme Court of Florida has the sole authority to enter an order under the provisions of this rule.

(c) Procedure.

(1) *Commencement.* Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct.

(2) *Order to Show Cause.* The court, acting on its own motion, or on the recommendation of the referee or petition of the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order will be served on the referee, if one has been appointed, the respondent, and The Florida Bar.

(3) *Response to Order to Show Cause.* The individual alleged to have engaged in vexatious conduct has 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, is deemed a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response must be served on a referee, if one has been appointed, the respondent, and The Florida Bar.

(4) *Reply.* The referee, if one has been appointed, the respondent, and The Florida Bar have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided without good cause prohibits a reply.

(5) *Referral to Referee.* The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under this subdivision will be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules.

(d) Court Order.

(1) *Rejection of Communications.* An order issued under this rule may contain provisions permitting the clerk of the Supreme Court of Florida, referee, The Florida Bar, and/or any other individual(s) or entity(ies) specified in the order to reject or block vexatious communications as specifically designated in the order. The order may authorize the individual(s), entity(ies), or group(s) specified in the order to block telephone calls made or

electronic mail sent by an individual subject to an order issued under the authority of this rule.

(2) *Denial of Physical Access.* The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations.

(3) *Prohibition of or Limitation on Filings.* The order of the court may include a requirement that an individual subject to an order issued under the authority of this rule may be prohibited from submitting any future filings unless they are submitted solely by a member of The Florida Bar who is eligible to practice law or another person authorized to appear in the proceedings. If a person who is subject to an order issued under this rule is a member of The Florida Bar, that member may be prohibited from co-signing and submitting future filings.

(e) Violation of Order. Violation of an order issued under this rule will be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar.

Comment

This rule is enacted to address circumstances involving repetitive conduct of the type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system, which must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, “every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution’s limited resources. A part of the court’s responsibility is to see that these resources are allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180, 184 (1989).

This concept has also been recognized in bar disciplinary proceedings by the Supreme Court of Florida when the court stated: “Kandekore’s actions create a drain on the Court’s limited time, for with each filing the Court has, as it must, reviewed and considered repetitious and meritless arguments. Therefore, we conclude that a limitation on Kandekore’s ability to file repeated challenges to his long-final sanctions would further the constitutional right of access because it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others.” *The Florida Bar re Kandekore*, 932 So. 2d 1005, 1006 (Fla. 2006). Kandekore engaged in vexatious conduct after the court entered an order of disbarment.

The Supreme Court of Florida has also limited the ability of a lawyer to file further pleadings while that lawyer’s disciplinary case(s) were in active litigation. *The Florida Bar v. Thompson*, 979 So. 2d 917 (Fla. 2008).

New rule November 19, 2009, effective February 1, 2010 (SC08-1890), (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A LAWYER'S RESPONSIBILITIES

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., rules 4-1.12 and 4-2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See rule 4-8.4.

In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or by law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system, because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of the lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct and in substantive and procedural law. A lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Zealous advocacy is not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and heed their legal obligations, when they know their communications will be private.

In the practice of law, conflicting responsibilities are often encountered. Difficult ethical problems may arise from a conflict between a lawyer's responsibility to a client and the lawyer's own sense of personal honor, including obligations to society and the legal profession. The Rules of Professional Conduct often prescribe terms for resolving these conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. These issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-government. Self-regulation helps maintain the legal profession's independence from undue government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility.

Thus, every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Scope:

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms of "must," "must not," or "may not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts

within the bounds of that discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The comment accompanying each rule explains and illustrates the meaning and purpose of the rule. The comments are intended only as guides to interpretation, whereas the text of each rule is authoritative. Thus, comments, even when they use the term "should," do not add obligations to the rules but merely provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law. The comments are sometimes used to alert lawyers to their responsibilities under other law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, for example confidentiality under rule 4-1.6, which attach when the lawyer agrees to consider whether a client-lawyer relationship will be established. See rule 4-1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing

to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating a substantive legal duty. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of a breach of the applicable standard of conduct.

Terminology:

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See "informed consent" below. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time.

"Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in the legal department of a corporation or other organization.

"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in the state of Florida.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

“Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

“Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

“Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

“Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment

Confirmed in writing

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time. If a lawyer has obtained a client’s informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time.

Firm

Whether 2 or more lawyers constitute a firm above can depend on the specific facts. For example, 2 practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by 1 lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning

of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

When used in these rules, the terms “fraud” or “fraudulent” refer to conduct that has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed consent

Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., rules 4-1.2(c), 4-1.6(a), 4-1.7(b), and 4-1.18. The communication necessary to obtain consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, these persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client’s or other person’s silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules state that a person’s consent be confirmed in writing. See, e.g., rule 4-1.7(b). For a definition of “writing” and

“confirmed in writing,” see terminology above. Other rules require that a client’s consent be obtained in a writing signed by the client. See, e.g., rule 4-1.8(a). For a definition of “signed,” see terminology above.

Screened

This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under rules 4-1.11, 4-1.12, or 4-1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake these procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practicable after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107), amended November 9, 2017, effective February 1, 2018.

4-1. CLIENT-LAWYER RELATIONSHIP

RULE 4-1.1 COMPETENCE

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

Legal knowledge and skill

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in

question. In many instances the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also rule 4-6.2.

Thoroughness and preparation

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. The lawyer should consult with the client about the degree of thoroughness and the level of preparation required as well as the estimated costs involved under the circumstances.

Maintaining competence

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, and comply with all continuing legal education requirements to which the lawyer is subject.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); September 29, 2016, effective January 1, 2017 (SC16-574), 200 So.3d 1225.

RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION

(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. In a criminal case, the lawyer must abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) No Endorsement of Client's Views or Activities. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) Limitation of Objectives and Scope of Representation. If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding applicability of the rule prohibiting communication with a represented person.

(d) Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Comment

Allocation of authority between client and lawyer

Subdivision (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions. The decisions specified in subdivision (a), such as whether to settle a civil matter, must also be made by the client. See rule 4-1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by rule 4-1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. The lawyer should consult with the client and seek a

mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See rule 4-1.16(b)(2). Conversely, the client may resolve the disagreement by discharging the lawyer. See rule 4-1.16(a)(3).

At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 4-1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to rule 4-1.14.

Independence from client's views or activities

Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval. By the same token representing a client does not constitute approval of the client's views or activities.

Agreements limiting scope of representation

The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms on which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent, or which the client regards as financially impractical.

Although this rule affords the lawyer and client substantial latitude to limit the representation if not prohibited by law or rule, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. In addition, a lawyer and client may agree that the representation will be limited to providing assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate "Prepared with the assistance of counsel" on the document to avoid misleading the court, which otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If not prohibited by law or rule, a lawyer and client may agree that any in-court representation in a family law proceeding be limited as provided for in Family Law Rule of Procedure 12.040. For example, a lawyer and client may agree that the lawyer will represent

the client at a hearing regarding child support and not at the final hearing or in any other hearings. For limited in-court representation in family law proceedings, the attorney shall communicate to the client the specific boundaries and limitations of the representation so that the client is able to give informed consent to the representation.

Regardless of the circumstances, a lawyer providing limited representation forms an attorney-client relationship with the litigant, and owes the client all attendant ethical obligations and duties imposed by the Rules Regulating The Florida Bar, including, but not limited to, duties of competence, communication, confidentiality, and avoidance of conflicts of interest. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See rule 4-1.1.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. For example, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, fraudulent, and prohibited transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not assist a client in conduct that the lawyer knows or reasonably should know to be criminal or fraudulent. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See rule 4-1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. See rule 4-1.1.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Subdivision (d) applies whether or not the defrauded party is a party to the transaction. For example, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Subdivision (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last sentence of subdivision (d) recognizes that determining the validity or interpretation of a statute or regulation

may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See rule 4-1.4(a)(5).

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); November 13, 2003, effective January 1, 2004. (SC02-2035) (860 So.2d 394); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); October 19, 2017, effective November 20, 2017 (SC 17-458); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 4-1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's workload must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in rule 4-1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is

looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See rule 4-1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See rule 4-1.2.

Comment amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-1.4 COMMUNICATION

(a) Informing Client of Status of Representation. A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

Reasonable communication between the lawyer and the client is necessary for the client to effectively participate in the representation.

Communicating with client

If these rules require that a particular decision about the representation be made by the client, subdivision (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See rule 4-1.2(a).

Subdivision (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, subdivision (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subdivision (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected.

Lawyers have particular responsibilities in communicating with clients regarding changes in firm composition. See Rule 4-5.8.

Explaining matters

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.

Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in terminology.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See rule 4-1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See rule 4-1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding information

In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 4-3.4(c) directs compliance with such rules or orders.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. A lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged under that contract will be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

(d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client and Definitions.

(1) *Duty to Communicate.* When the lawyer has not regularly represented the client, the basis or rate of the fee and costs must be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part must be confirmed in writing and must explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

The fact that a contract may not be in accord with these rules is an issue between the lawyer and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

(2) *Definitions.*

(A) Retainer. A retainer is a sum of money paid to a lawyer to guarantee the lawyer's future availability. A retainer is not payment for past legal services and is not payment for future services.

(B) Flat Fee. A flat fee is a sum of money paid to a lawyer for all legal services to be provided in the representation. A flat fee may be termed "non-refundable."

(C) Advance Fee. An advanced fee is a sum of money paid to the lawyer against which the lawyer will bill the client as legal services are provided.

(f) Contingent Fees. As to contingent fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement must be in writing and must state the method by which the fee is to be determined, including the percentage or percentages that will accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether those expenses are to be deducted before or after the contingent fee is calculated. On conclusion of a contingent fee matter, the lawyer must provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding in which the lawyer's compensation is to be dependent or contingent in whole or in part on the successful prosecution or settlement must do so only where the fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm must sign the contract with the client and must agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client must be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule will apply to such fee contracts.

(3) A lawyer must not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent on the securing of a divorce or on the amount of alimony or support, or property settlement in lieu thereof; or

(B) a contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based on tortious conduct of another, including products liability claims, in which the compensation is to be dependent or contingent in whole or in part on the successful prosecution or settlement must do so only under the following requirements:

(A) The contract must contain the following provisions:

(i) “The undersigned client has, before signing this contract, received and read the statement of client’s rights and understands each of the rights set forth in it. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned lawyer(s).”

(ii) “This contract may be cancelled by written notification to the lawyer at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client is not be obligated to pay any fees to the attorney for the work performed during that time. If the lawyer has advanced funds to others in representation of the client, the lawyer is entitled to be reimbursed for amounts that the lawyer has reasonably advanced on behalf of the client.”

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed on by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards are presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:

1. 40% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 20% of any portion of the recovery between \$1 million and \$2 million; plus
3. 15% of any portion of the recovery exceeding \$2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding or postjudgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain a lawyer of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if that court will not accept jurisdiction for the fee approval, the circuit court in which the cause of action arose, for approval of any fee contract between the client and a lawyer of the client's choosing. Authorization will be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of the contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings on the petition may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision must contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition must be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract does not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii), a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability in which the compensation is dependent or contingent in whole or in part on the successful prosecution or settlement must provide the language of

article I, section 26 of the Florida Constitution to the client in writing and must orally inform the client that:

a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

b. If a lawyer chooses not to accept the representation of a client under the terms of article I, section 26 of the Florida Constitution, the lawyer must advise the client, both orally and in writing, of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the representation under the terms of article I, section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent.

c. If any client desires to waive any rights under article I, section 26 of the Florida Constitution in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer must provide each client a copy of the written waiver and must afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, must be given to each client to retain, and the lawyer must keep a copy in the lawyer's file pertaining to the client. The waiver must be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4-1.5(f)(5).

WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I, SECTION 26 OF THE FLORIDA CONSTITUTION

On November 2, 2004, voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution

Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000,

exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

The undersigned client understands and acknowledges that (initial each provision):

_____ I have been advised that signing this waiver releases an important constitutional right; and

_____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

_____ By signing this waiver I agree to an increase in the attorney fee that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rule Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to \$1 million; plus 20% to 30% of any portion of the recovery between \$1 million and \$2 million; plus 15% to 20% of any recovery exceeding \$2 million; and

_____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and

_____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

_____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT

The undersigned client hereby acknowledges, under oath, the following:

I have read and understand this entire waiver of my rights under the constitutional provision set forth above.

I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof.

I have entered into and signed this waiver freely and voluntarily.

I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide this waiver to the court for its consideration without my presence.

Dated this _____ day of _____, ____.

By: _____

CLIENT

Sworn to and subscribed before me this _____ day of _____, ____ by _____, who is personally known to me, or has produced the following identification: _____.

Notary Public

My Commission Expires:

Dated this _____ day of _____, ____.

By: _____

ATTORNEY

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer must provide the client with a copy of the statement of client's rights and must afford the client a full and complete opportunity to understand each of the rights as set forth in it. A copy of the statement, signed by both the client and the lawyer, must be given to the client to retain and the lawyer must keep a copy in the client's file. The statement must be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) must be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% will be presumed to be clearly excessive.

(iii) The 25% limitation will not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In those circumstances counsel must apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept

jurisdiction for the fee division, the circuit court in which the cause of action arose, for authorization of the fee division in excess of 25%, based on a sworn petition signed by all counsel that discloses in detail those services to be performed. The application for authorization of the contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings on these applications may occur before service of process on any party and this aspect of the file may be sealed. Authorization of the contract will not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision must contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition must be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision are applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(5) In the event there is a recovery, on the conclusion of the representation, the lawyer must prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement must be executed by all participating lawyers, as well as the client, and each must receive a copy. Each participating lawyer must retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement must be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage must be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

- (1) the division is in proportion to the services performed by each lawyer; or
- (2) by written agreement with the client:

(A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and

(B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.

(h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. Lawyers may charge clients the actual charge the credit plan imposes on the lawyer for the client's transaction.

(i) Arbitration Clauses. A lawyer must not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with 1 lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain

court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

_____	_____
Client Signature	Attorney Signature
_____	_____
Date	Date
Comment	

Bases or rate of fees and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a

reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Lawyers should also be mindful of any statutory, constitutional, or other requirements or restrictions on attorneys' fees.

In order to avoid misunderstandings concerning the nature of legal fees, written documentation is required when any aspect of the fee is nonrefundable. A written contract provides a method to resolve misunderstandings and to protect the lawyer in the event of continued misunderstanding. Rule 4-1.5 (e) does not require the client to sign a written document memorializing the terms of the fee. A letter from the lawyer to the client setting forth the basis or rate of the fee and the intent of the parties in regard to the nonrefundable nature of the fee is sufficient to meet the requirements of this rule.

All legal fees and contracts for legal fees are subject to the requirements of the Rules Regulating The Florida Bar. In particular, the test for reasonableness of legal fees found in rule 4-1.5(b) applies to all types of legal fees and contracts related to them.

Terms of payment

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See rule 4-1.16(d). A lawyer is not, however, required to return retainers that, pursuant to an agreement with a client, are not refundable. A nonrefundable retainer or nonrefundable flat fee is the property of the lawyer and should not be held in trust. If a client gives the lawyer a negotiable instrument that represents both an advance on costs plus either a nonrefundable retainer or a nonrefundable flat fee, the entire amount should be deposited into the lawyer's trust account, then the portion representing the earned nonrefundable retainer or nonrefundable flat fee should be withdrawn within a reasonable time. An advance fee must be held in trust until it is earned. Nonrefundable fees are, as all fees, subject to the prohibition against excessive fees.

A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required,

unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Prohibited contingent fees

Subdivision (f)(3)(A) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent on the securing of a divorce or on the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar.

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part noncontingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the noncontingent portion of the fee agreement. An attorney could properly charge and retain the noncontingent portion of the fee even if the matter was not successfully prosecuted or if the noncontingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned noncontingent fees. Thus, under such a contract a lawyer may demand or collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client on approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

On a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract.

The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5(f)(4)(B)(iii) is added to acknowledge the provisions of Article 1, Section 26 of the Florida Constitution, and to create an affirmative obligation on the part of an attorney contemplating a contingency fee contract to notify a potential client with a medical liability claim of the limitations provided in that constitutional provision. This addition to the rule is adopted prior to any judicial interpretation of the meaning or scope of the constitutional provision and this rule is not intended to make any substantive interpretation of the meaning or scope of that provision. The rule also provides that a client who wishes to waive the rights of the constitutional provision, as those rights may relate to attorney's fees, must do so in the form contained in the rule.

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client.

Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the

bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees.

Division of fee

A division of fee is a single billing to a client covering the fee of 2 or more lawyers who are not in the same firm. A division of fee facilitates association of more than 1 lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Subject to the provisions of subdivision (f)(4)(D), subdivision (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in rule 4-5.1 for purposes of the matter involved.

Disputes over fees

Since the fee arbitration rule (chapter 14) has been established by the bar to provide a procedure for resolution of fee disputes, the lawyer should conscientiously consider submitting to it. Where law prescribes a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages, the lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Referral fees and practices

A secondary lawyer is not entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that allowed by the limitation.

The provisions of rule 4-1.5(f)(4)(D)(iii) only apply where the participating lawyers have for purposes of the specific case established a co-counsel relationship. The need for court approval of a referral fee arrangement under rule 4-1.5(f)(4)(D)(iii) should only occur in a small percentage of cases arising under rule 4-1.5(f)(4) and usually occurs prior to the commencement of litigation or at the onset of the representation. However, in those cases in which litigation has been commenced or the representation has already begun, approval of the fee division should be sought within a reasonable period of time after the need for court approval of the fee division arises.

In determining if a co-counsel relationship exists, the court should look to see if the lawyers have established a special partnership agreement for the purpose of the specific case or matter. If such an agreement does exist, it must provide for a sharing of services or responsibility and the fee division is based upon a division of the services to be rendered or the responsibility assumed.

It is contemplated that a co-counsel situation would exist where a division of responsibility is based on, but not limited to, the following: (a) based upon geographic considerations, the lawyers agree to divide the legal work, responsibility, and representation in a convenient fashion (such a situation would occur when different aspects of a case must be handled in different locations); (b) where the lawyers agree to divide the legal work and representation based on their particular expertise in the substantive areas of law involved in the litigation; or (c) where the lawyers agree to divide the legal work and representation along established lines of division, such as liability and damages, causation and damages, or other similar factors.

The trial court's responsibility when reviewing an application for authorization of a fee division under rule 4-1.5(f)(4)(D)(iii) is to determine if a co-counsel relationship exists in that particular case. If the court determines a co-counsel relationship exists and authorizes the fee division requested, the court does not have any responsibility to review or approve the specific amount of the fee division agreed upon by the lawyers and the client.

Rule 4-1.5(f)(4)(D)(iv) applies to the situation where appellate counsel is retained during the trial of the case to assist with the appeal of the case. The percentages set forth in subdivision (f)(4)(D) are to be applicable after appellate counsel's fee is established. However, the effect should not be to impose an unreasonable fee on the client.

Credit plans

Credit plans include credit cards.

Amended: Oct. 20, 1987, effective Jan. 1, 1988 (519 So.2d 971); Oct. 26, 1989 (550 So.2d 1120); Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); July 20, 1995 (658 So.2d 930); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004, (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); September 28, 2006, effective September 28, 2006 (SC05-1150), (939 So.2d 1032); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967), amended November 9, 2017, effective February 1, 2018 (SC16-1962); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. A lawyer must not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer must reveal confidential information to the extent the lawyer reasonably believes necessary:

- (1) to prevent a client from committing a crime; or
- (2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal confidential information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;

(3) to establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved;

(4) to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with the Rules Regulating The Florida Bar; or

(6) to detect and resolve conflicts of interest between lawyers in different firms arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(d) Exhaustion of Appellate Remedies. When required by a tribunal to reveal confidential information, a lawyer may first exhaust all appellate remedies.

(e) Inadvertent Disclosure of Information. A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(f) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer must disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

Comment

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of confidential information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.

See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based on experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose confidential information except as authorized or required by the Rules Regulating The Florida Bar or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In this situation the lawyer has not violated rule 4-1.2(d), because to “counsel or assist” criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer must reveal information in order to prevent these consequences. It is admittedly difficult for a lawyer to “know” when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the lawyer to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer’s exercise of discretion requires consideration of such factors as the nature of the lawyer’s relationship with the client and with those who might be injured by the client, the lawyer’s own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client’s interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer’s services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client’s confidences, except as otherwise provided in rule 4-1.6. Neither this rule nor rule 4-1.8(b) nor rule 4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule, the lawyer may make inquiry within the organization as indicated in rule 4-1.13(b).

Dispute concerning lawyer’s conduct

A lawyer’s confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer’s personal responsibility to comply with these rules. In most situations, disclosing information to secure this advice will be impliedly authorized for the

lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits this disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges complicity, so that the defense may be established by responding directly to a third party who has made the assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. A charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against a supersession.

Detection of Conflicts of Interest

Subdivision (c)(6) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, for example, when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See comment to rule 4-1.17. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. The disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, subdivision (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these rules.

Any information disclosed under this subdivision may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. This subdivision does not restrict the use of information acquired by means independent of any disclosure under this subdivision. This subdivision also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, for example, when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Acting Competently to Preserve Confidentiality

Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See rules 4-1.1, 4-5.1 and 4-5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forgo security measures that would otherwise be required by this rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, for example state and federal laws that

govern data privacy or that impose notification requirements on the loss of, or unauthorized access to, electronic information, is beyond the scope of these rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see the comment to rule 4-5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, for example state and federal laws that govern data privacy, is beyond the scope of these rules.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

(1) the representation of 1 client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

(d) Lawyers Related by Blood, Adoption, or Marriage. A lawyer related by blood, adoption, or marriage to another lawyer as parent, child, sibling, or spouse must not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing.

(e) Representation of Insureds. Upon undertaking the representation of an insured client at the expense of the insurer, a lawyer has a duty to ascertain whether the lawyer will be representing both the insurer and the insured as clients, or only the insured, and to inform both the insured and the insurer regarding the scope of the representation. All other Rules Regulating The Florida Bar related to conflicts of interest apply to the representation as they would in any other situation.

Comment

Loyalty to a client

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. For specific rules regarding certain conflicts of interest, see rule 4-1.8. For former client conflicts of interest, see rule 4-1.9. For conflicts of interest involving prospective clients, see rule 4-1.18. For definitions of "informed consent" and "confirmed in writing," see terminology.

An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See rule 4-1.16. Where more than 1 client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by rule 4-1.9. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see comment to rule 4-1.3 and scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client's or another client's interests without the affected client's consent. Subdivision (a)(1) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the

respective clients. Subdivision (a)(1) applies only when the representation of 1 client would be directly adverse to the other and where the lawyer's responsibilities of loyalty and confidentiality of the other client might be compromised.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Subdivision (a)(2) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and consent

A client may consent to representation notwithstanding a conflict. However, as indicated in subdivision (a)(1) with respect to representation directly adverse to a client and subdivision (a)(2) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than 1 client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and 1 of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See rules 4-1.1 and 4-1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in litigation

Subdivision (a)(1) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by subdivisions (a), (b), and (c). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a

criminal case is so grave that ordinarily a lawyer should decline to represent more than 1 co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of subdivisions (b) and (c) are met.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of person paying for a lawyer's service

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See rule 4-1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

Other conflict situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the 2 roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict charged by an opposing party

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See scope.

Family relationships between lawyers

Rule 4-1.7(d) applies to related lawyers who are in different firms. Related lawyers in the same firm are also governed by rules 4-1.9 and 4-1.10. The disqualification stated in rule 4-1.7(d) is personal and is not imputed to members of firms with whom the lawyers are associated. The purpose of Rule 4-1.7(d) is to prohibit representation of adverse interests, unless informed consent is given by the client, by a lawyer related to another lawyer by blood, adoption, or marriage as a parent, child, sibling, or spouse so as to include those with biological or adopted children and within relations by marriage those who would be considered in-laws and stepchildren and stepparents.

Representation of insureds

The unique tripartite relationship of insured, insurer, and lawyer can lead to ambiguity as to whom a lawyer represents. In a particular case, the lawyer may represent only the insured, with the insurer having the status of a non-client third party payor of the lawyer's fees. Alternatively, the lawyer may represent both as dual clients, in the absence of a disqualifying conflict of interest, upon compliance with applicable rules. Establishing clarity as to the role of the lawyer at the inception of the representation avoids misunderstanding that may ethically compromise the lawyer. This is a general duty of every lawyer undertaking representation of a client, which is

made specific in this context due to the desire to minimize confusion and inconsistent expectations that may arise.

Consent confirmed in writing or stated on the record at a hearing

Subdivision (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing or clearly stated on the record at a hearing. With regard to being confirmed in writing, such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See terminology. If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time afterwards. See terminology. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Jan. 23, 2003, effective July 1, 2003 (838 So.2d 1140); March 23, 2006, effective May 22, 2006 (SC04-2246); revised opinion issued June 29, 2006, (933 So.2d 417); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

(a) Business Transactions With or Acquiring Interest Adverse to Client. A lawyer is prohibited from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Using Information to Disadvantage of Client. A lawyer is prohibited from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) Gifts to Lawyer or Lawyer's Family. A lawyer is prohibited from soliciting any gift from a client, including a testamentary gift, or preparing on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

(d) Acquiring Literary or Media Rights. Prior to the conclusion of representation of a client, a lawyer is prohibited from making or negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) Financial Assistance to Client. A lawyer is prohibited from providing financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) Compensation by Third Party. A lawyer is prohibited from accepting compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by rule 4-1.6.

(g) Settlement of Claims for Multiple Clients. A lawyer who represents 2 or more clients is prohibited from participating in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure must include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) Limiting Liability for Malpractice. A lawyer is prohibited from making an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer is prohibited from settling a claim for liability for malpractice with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in making the agreement.

(i) Acquiring Proprietary Interest in Cause of Action. A lawyer is prohibited from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee.

(j) Representation of Insureds. When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based on tortious conduct, including product liability claims, the Statement of Insured Client's Rights must be provided to the insured at the commencement of the representation. The lawyer must sign the statement certifying the date on which the statement was provided to the insured. The lawyer must keep a copy of the signed statement in the client's file and must retain a copy of the signed statement for 6 years after the representation is completed. The statement must be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights augments or detracts from any substantive or ethical duty of a lawyer or affect the extra disciplinary consequences of violating an existing substantive legal or ethical duty; nor does any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. *Your Lawyer.* If you have questions concerning the selection of the lawyer by the insurance company, you should discuss the matter with the insurance company and the lawyer. As a client, you have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours and give you this information in writing, if you request it. Your lawyer is responsible for keeping you reasonably informed regarding the case and promptly complying with your reasonable requests for information. You are entitled to be informed of the final disposition of your case within a reasonable time.

2. *Fees and Costs.* Usually the insurance company pays all of the fees and costs of defending the claim. If you are responsible for directly paying the lawyer for any fees or costs, your lawyer must promptly inform you of that.

3. *Directing the Lawyer.* If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under these policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4. *Litigation Guidelines.* Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes those guidelines affect the range of actions the lawyer can take and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. On request, the lawyer or the insurance company should either explain the guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

5. *Confidentiality.* Lawyers have a general duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you also may have a duty to share with the insurance company information relating to the defense or settlement of the claim. If the lawyer learns of information indicating that the insurance company is not obligated under the policy to cover the claim or provide a defense, the lawyer's duty is to maintain that information in confidence. If the lawyer cannot do so, the lawyer may be required to withdraw from the representation without disclosing to the insurance company the nature of the conflict of interest which has arisen. Whenever a waiver of the lawyer-client confidentiality privilege is needed, your lawyer has a duty to consult with you and obtain your informed consent. Some insurance companies retain auditing companies to review the billings and files of the lawyers they hire to represent policyholders. If the lawyer believes a bill review or other action releases information in a manner that is contrary to your interests, the lawyer should advise you regarding the matter.

6. *Conflicts of Interest.* Most insurance policies state that the insurance company will provide a lawyer to represent your interests as well as those of the insurance company. The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you believe the lawyer provided by the insurance company cannot fairly represent you because of conflicts of interest between you and the company (such as whether there is insurance coverage for the claim against you), you should discuss this with the lawyer and explain why you believe there is a conflict. If an actual conflict of interest arises that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. *Settlement.* Many policies state that the insurance company alone may make a final decision regarding settlement of a claim, but under some policies your agreement is required. If you want to object to or encourage a settlement within policy limits, you should discuss your concerns with your lawyer to learn your rights and possible consequences. No settlement of the case requiring you to pay money in excess of your policy limits can be reached without your agreement, following full disclosure.

8. *Your Risk.* If you lose the case, there might be a judgment entered against you for more than the amount of your insurance, and you might have to pay it. Your lawyer has a duty to advise you about this risk and other reasonably foreseeable adverse results.

9. *Hiring Your Own Lawyer.* The lawyer provided by the insurance company is representing you only to defend the lawsuit. If you desire to pursue a claim against the other side, or desire legal services not directly related to the defense of the lawsuit against you, you

will need to make your own arrangements with this or another lawyer. You also may hire another lawyer, at your own expense, to monitor the defense being provided by the insurance company. If there is a reasonable risk that the claim made against you exceeds the amount of coverage under your policy, you should consider consulting another lawyer.

10. *Reporting Violations.* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the bar at www.floridabar.org.

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS,
PLEASE ASK FOR AN EXPLANATION.**

CERTIFICATE

The undersigned certifies that this Statement of Insured Client's Rights has been provided to(name of insured/client(s))..... by(mail/hand delivery)..... at(address of insured/client(s) to which mailed or delivered) on(date).....

[Signature of Lawyer]

[Print/Type Name]

Florida Bar No.: _____

(k) Imputation of Conflicts. While lawyers are associated in a firm, a prohibition in the foregoing subdivisions (a) through (i) that applies to any one of them applies to all of them.

Comment

Business transactions between client and lawyer

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client. The requirements of subdivision (a) must be met even when the transaction is not closely related to the subject matter of the representation. The rule applies to lawyers engaged in the sale of goods or services related to the practice of law. See rule 4-5.7. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 4-1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment for all or part of a fee. In addition, the rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In these types of transactions the lawyer has no advantage in dealing with the client, and the restrictions in subdivision (a) are unnecessary and impracticable. Likewise, subdivision (a) does not prohibit a lawyer from acquiring or asserting a lien granted by law to secure the lawyer's fee or expenses.

Subdivision (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subdivision (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain advice. Subdivision (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See terminology (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subdivision (a), but also with the requirements of rule 4-1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. The lawyer also must obtain the client's informed consent. In some cases, rule 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction because of the lawyer's interest.

If the client is independently represented in the transaction, subdivision (a)(2) of this rule is inapplicable, and the subdivision (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subdivision (a)(1) further requires.

Gifts to lawyers

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although the gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee.

This rule does not prohibit a lawyer or a partner or associate of the lawyer from serving as personal representative of the client's estate or in another potentially lucrative fiduciary position in connection with a client's estate planning. A lawyer may prepare a document that appoints the lawyer or a person related to the lawyer to a fiduciary office if the client is properly informed, the appointment does not violate rule 4-1.7, the appointment is not the product of undue influence or improper solicitation by the lawyer, and the client gives informed consent, confirmed in writing. In obtaining the client's informed consent to the conflict, the lawyer should advise the client in writing concerning who is eligible to serve as a fiduciary, that a person who serves as a fiduciary is entitled to compensation, and that the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorney's fees that the lawyer or the lawyer's firm may earn for serving as a lawyer for the fiduciary.

Literary rights

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subdivision (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee will consist of a share in ownership in the property if the arrangement conforms to rule 4-1.5 and subdivision (a) and (i).

Financial assistance

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because financial assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer advancing a client court costs and litigation expenses, including the expenses of diagnostic medical examination used for litigation purposes and the reasonable costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person paying for lawyer's services

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company), or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing these representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also rule 4-5.4(d) (prohibiting

interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with rule 4-1.7. The lawyer must also conform to the requirements of rule 4-1.6 concerning confidentiality. Under rule 4-1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under rule 4-1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subdivision. Under rule 4-1.7(b), the informed consent must be confirmed in writing or clearly stated on the record at a hearing.

Aggregate settlements

Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under rule 4-1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, rule 4-1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this subdivision is a corollary of both these rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also terminology (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Acquisition of interest in litigation

Subdivision (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in rule 4-1.5 and the exception for certain advances of the costs of litigation set forth in subdivision (e).

This rule is not intended to apply to customary qualification and limitations in legal opinions and memoranda.

Representation of insureds

As with any representation of a client when another person or client is paying for the representation, the representation of an insured client at the request of the insurer creates a special need for the lawyer to be cognizant of the potential for ethical risks. The nature of the relationship between a lawyer and a client can lead to the insured or the insurer having

expectations inconsistent with the duty of the lawyer to maintain confidences, avoid conflicts of interest, and otherwise comply with professional standards. When a lawyer undertakes the representation of an insured client at the expense of the insurer, the lawyer should ascertain whether the lawyer will be representing both the insured and the insurer, or only the insured. Communication with both the insured and the insurer promotes their mutual understanding of the role of the lawyer in the particular representation. The Statement of Insured Client's Rights has been developed to facilitate the lawyer's performance of ethical responsibilities. The highly variable nature of insurance and the responsiveness of the insurance industry in developing new types of coverages for risks arising in the dynamic American economy render it impractical to establish a statement of rights applicable to all forms of insurance. The Statement of Insured Client's Rights is intended to apply to personal injury and property damage tort cases. It is not intended to apply to workers' compensation cases. Even in that relatively narrow area of insurance coverage, there is variability among policies. For that reason, the statement is necessarily broad. It is the responsibility of the lawyer to explain the statement to the insured. In particular cases, the lawyer may need to provide additional information to the insured.

Because the purpose of the statement is to assist laypersons in understanding their basic rights as clients, it is necessarily abbreviated. Although brevity promotes the purpose for which the statement was developed, it also necessitates incompleteness. For these reasons, it is specifically provided that the statement does not establish any legal rights or duties, nor create any presumption that an existing legal or ethical duty has been breached. As a result, the statement and its contents should not be invoked by opposing parties as grounds for disqualification of a lawyer or for procedural purposes. The purpose of the statement would be subverted if it could be used in such a manner.

The statement is to be signed by the lawyer to establish that it was timely provided to the insured, but the insured client is not required to sign it. It is in the best interests of the lawyer to have the insured client sign the statement to avoid future questions, but it is considered impractical to require the lawyer to obtain the insured client's signature in all instances.

Establishment of the statement and the duty to provide it to an insured in tort cases involving personal injury or property damage should not be construed as lessening the duty of the lawyer to inform clients of their rights in other circumstances. When other types of insurance are involved, when there are other third-party payors of fees, or when multiple clients are represented, similar needs for fully informing clients exist, as recognized in rules 4-1.7(c) and 4-1.8(f).

Imputation of prohibitions

Under subdivision (k), a prohibition on conduct by an individual lawyer in subdivisions (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, 1 lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with subdivision (a), even if the first lawyer is not personally involved in the representation of the client.

Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); March 23, 2006, effective, May 22, 2006, (SC04-2246), (933 So.2d 417); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018.

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter must not afterwards:

- (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;
- (b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
- (c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

Comment

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this rule. The principles in rule 4-1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of rule 4-1.9(a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute, or if the current matter would involve the lawyer attacking work that the lawyer performed for the former client. For example, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent.

Lawyers owe confidentiality obligations to former clients, and thus information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client without the former client's consent. However, the fact that a

lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The essential question is whether, but for having represented the former client, the lawyer would know or discover the information.

Information acquired in a prior representation may have been rendered obsolete by the passage of time. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

The provisions of this rule are for the protection of clients and can be waived if the former client gives informed consent. See terminology.

With regard to an opposing party's raising a question of conflict of interest, see comment to rule 4-1.7. With regard to disqualification of a firm with which a lawyer is associated, see rule 4-1.10.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them may knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer. When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter

representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(d) Waiver of Conflict. A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 4-1.7.

(e) Government Lawyers. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11.

Comment

Definition of “firm”

There is ordinarily no question that the members of an organization’s law department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by rule 4-1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by rule 4-1.11(c)(1). The individual lawyer involved is bound by the rules generally, including rules 4-1.6, 4-1.7, and 4-1.9.

Different provisions are thus made for movement of a lawyer from 1 private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in rules 4-1.6, 4-1.9, and 4-1.11. However, if the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government’s recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.

Principles of imputed disqualification

The rule of imputed disqualification stated in subdivision (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. These situations can be considered from the premise that a firm of lawyers is essentially 1 lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Subdivision (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from 1 firm to another the situation is governed by subdivisions (b) and (c).

The rule in subdivision (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where 1 lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in subdivision (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. These persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See terminology and rule 4-5.3.

Lawyers moving between firms

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to 1 field or another, and that many move from 1 association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from 1 practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under 2 rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a

partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety and was proscribed in former Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since “impropriety” is undefined, the term “appearance of impropriety” is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm’s clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients.

Application of subdivisions (b) and (c) depends on a situation’s particular facts. In any inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of relevant information protected by rules 4-1.6 and 4-1.9(b) and (c). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.

Consent to conflict

Rule 4-1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in rule 4-1.7. The conditions stated in rule 4-1.7 require the lawyer to determine that the representation is not prohibited by rule 4-1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing or clearly stated on the record. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see terminology.

Imputation of conflicts in rule 4-1.8

Where a lawyer is prohibited from engaging in certain transactions under rule 4-1.8, subdivision (k) of that rule, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (SC10-1968) amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 4-1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Representation of Private Client by Former Public Officer or Employee. A lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to rule 4-1.9(b) and (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) Representation by Another Member of the Firm. When a lawyer is disqualified from representation under subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Use of Confidential Government Information. A lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which

that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Limits on Participation of Public Officer or Employee. A lawyer currently serving as a public officer or employee:

(1) is subject to rules 4-1.7 and 4-1.9; and

(2) shall not:

(A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent; or

(B) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(e) Matter Defined. As used in this rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

A lawyer who has served or is currently serving as a public officer or employee is personally subject to the rules of professional conduct, including the prohibition against concurrent conflicts of interest stated in rule 4-1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule. See terminology for definition of informed consent.

Subdivisions (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 4-1.10 is not applicable to the conflicts of interest addressed by this rule. Rather, subdivision (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subdivision (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subdivisions (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer

from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subdivision (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subdivision (d). As with subdivisions (a)(1) and (d)(1), rule 4-1.10 is not applicable to the conflicts of interest addressed by these subdivisions.

This rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subdivision (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subdivisions (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by 1 government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subdivision (d), the latter agency is not required to screen the lawyer as subdivision (b) requires a law firm to do. The question of whether 2 government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules. See rule 4-1.13 comment, government agency.

Subdivisions (b) and (c) contemplate a screening arrangement. See terminology (requirements for screening procedures). These subdivisions do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subdivision (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subdivisions (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 4-1.7 and is not otherwise prohibited by law.

For purposes of subdivision (e) of this rule, a “matter” may continue in another form. In determining whether 2 particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252);, March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 4-1.12 FORMER JUDGE OR ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral. Except as stated in subdivision (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral. A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) Imputed Disqualification of Law Firm. If a lawyer is disqualified by subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) Exemption for Arbitrator as Partisan. An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

This rule generally parallels rule 4-1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 4-1.11. The term “adjudicative officer” includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2), and C of Florida’s Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not “act as a lawyer in a proceeding in which [the lawyer] has served as a judge or in any other proceeding related thereto.” Although phrased differently from this rule, those rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See terminology. Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See rule 4-2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 4-1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subdivision (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subdivision are met.

Requirements for screening procedures are stated in terminology. Subdivision (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to certified and court-appointed mediators.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252);, March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 4-1.13 ORGANIZATION AS CLIENT

(a) Representation of Organization. A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) Violations by Officers or Employees of Organization. If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

- (1) asking reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Resignation as Counsel for Organization. If, despite the lawyer's efforts in accordance with subdivision (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with rule 4-1.16.

(d) Identification of Client. In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) Representing Directors, Officers, Employees, Members, Shareholders, or Other Constituents of Organization. A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 4-1.7. If the organization's consent to the dual representation is required by rule 4-1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The entity as the client

An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this comment apply equally to unincorporated associations. “Other constituents” as used in this comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

When 1 of the constituents of an organizational client communicates with the organization’s lawyer in that person’s organizational capacity, the communication is protected by rule 4-1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client’s employees or other constituents are covered by rule 4-1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by rule 4-1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization’s interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

The organization’s highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to other rules

The authority and responsibility provided in this rule are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the

lawyer's responsibility under rule 4-1.6, 4-1.8, 4-1.16, 4-3.3, or 4-4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, rule 4-1.2(d) can be applicable.

Government agency

The duty defined in this rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these rules. Although in some circumstances the client may be a specific agency, it may also be a branch of the government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This rule does not limit that authority.

Clarifying the lawyer's role

There are times when the organization's interest may be or becomes adverse to those of 1 or more of its constituents. In such circumstances the lawyer should advise any constituent whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest that the lawyer cannot represent such constituent and that such person may wish to obtain independent representation. Care must be taken to assure that the constituent understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent and that discussions between the lawyer for the organization and the constituent may not be privileged.

Whether such a warning should be given by the lawyer for the organization to any constituent may turn on the facts of each case.

Dual representation

Subdivision (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative actions

Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, rule 4-1.7 governs who should represent the directors and the organization.

Representing related organizations

Consistent with the principle expressed in subdivision (a) of this rule, a lawyer or law firm who represents or has represented a corporation (or other organization) ordinarily is not presumed to also represent, solely by virtue of representing or having represented the client, an organization (such as a corporate parent or subsidiary) that is affiliated with the client. There are exceptions to this general proposition, such as, for example, when an affiliate actually is the alter ego of the organizational client or when the client has revealed confidential information to an attorney with the reasonable expectation that the information would not be used adversely to the client's affiliate(s). Absent such an exception, an attorney or law firm is not ethically precluded from undertaking representations adverse to affiliates of an existing or former client.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252);, March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-1.14 CLIENT UNDER A DISABILITY

(a) Maintenance of Normal Relationship. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) Appointment of Guardian. A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

Comment

The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that

some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See rule 4-1.2(d).

Disclosure of client's condition

Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability can adversely affect the client's interests. The lawyer may seek guidance from an appropriate diagnostician.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-1.15 SAFEKEEPING PROPERTY

Compliance With Trust Accounting Rules. A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252);, April 25, 2002 (820 So.2d 210).

RULE 4-1.16 DECLINING OR TERMINATING REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged;

(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or

(5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

(b) When Withdrawal Is Allowed. Except as stated in subdivision (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement;

(3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(5) other good cause for withdrawal exists.

(c) Compliance With Order of Tribunal. A lawyer must comply with applicable law requiring notice or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Protection of Client's Interest. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.

Comment

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See rule 4-1.2, and the comment to rule 4-1.3.

Mandatory withdrawal

A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Withdrawal is also mandatory if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud. Withdrawal is also required if the lawyer's services were misused in the past even if that would materially prejudice the client.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also rule 4-6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under rules 4-1.6 and 4-3.3.

Discharge

A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to be self-represented.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in rule 4-1.14.

Optional withdrawal

A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. The lawyer also may withdraw where the client insists on taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the client upon withdrawal

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers and other property as security for a fee only to the extent permitted by law.

Refunding advance payment of unearned fee

Upon termination of representation, a lawyer should refund to the client any advance payment of a fee that has not been earned. This does not preclude a lawyer from retaining any reasonable nonrefundable fee that the client agreed would be deemed earned when the lawyer commenced the client's representation. See also rule 4-1.5.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252);, May 20, 2004 (875 So.2d 448); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. The entire practice, or the entire area of practice, is sold to 1 or more lawyers or law firms authorized to practice law in Florida.

(b) Notice to Clients. Written notice is served by certified mail, return receipt requested, on each of the seller's clients of:

(1) the proposed sale;

(2) the client's right to retain other counsel; and

(3) the fact that the client's consent to the substitution of counsel will be presumed if the client does not object within 30 days after being served with notice.

(c) Court Approval Required. If a representation involves pending litigation, there will be no substitution of counsel or termination of representation unless authorized by the court. The seller may disclose, in camera, to the court information relating to the representation only to the extent necessary to obtain an order authorizing the substitution of counsel or termination of representation.

(d) Client Objections. If a client objects to the proposed substitution of counsel, the seller must comply with the requirements of rule 4-1.16(d).

(e) Consummation of Sale. A sale of a law practice may not be consummated until:

(1) with respect to clients of the seller who were served with written notice of the proposed sale, the 30-day period referred to in subdivision (b)(3) has expired or all these clients have consented to the substitution of counsel or termination of representation; and

(2) court orders have been entered authorizing substitution of counsel for all clients who could not be served with written notice of the proposed sale and whose representations involve pending litigation; provided, in the event the court fails to grant a substitution of counsel in a matter involving pending litigation, that matter may not be included in the sale and the sale otherwise will be unaffected. Further, the matters not involving pending litigation of any client who cannot be served with written notice of the proposed sale may not be included in the sale and the sale otherwise will be unaffected.

(f) Existing Fee Contracts Controlling. The purchaser must honor the fee agreements that were entered into between the seller and the seller's clients. The fees charged clients may not be increased by reason of the sale.

Comment

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. In accordance with the requirements of this rule, when a lawyer or an entire firm sells the practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See rules 4-5.4 and 4-5.6.

The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Similarly, a violation does not occur merely because a court declines to approve the substitution of counsel in the cases of a number of clients who could not be served with written notice of the proposed sale.

Sale of entire practice or entire area of practice

The rule requires that the seller's entire practice, or an area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, or practice area, subject to client consent or court authorization. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client confidences, consent, and notice

Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client do not violate the confidentiality provisions of rule 4-1.6 any more than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent ordinarily is not required. See rule 4-1.6(c)(6). Providing the prospective purchaser access to detailed information relating to the representation, for example, the file, however, requires client consent or court authorization. See rule 4-1.6. Rule 4-1.17 provides that the seller must attempt to serve each client with written notice of the contemplated sale, including the identity of the

purchaser and the fact that the decision to consent to the substitution of counsel or to make other arrangements must be made within 30 days. If nothing is heard within that time from a client who was served with written notice of the proposed sale, that client's consent to the substitution of counsel is presumed. However, with regard to clients whose matters involve pending litigation but who could not be served with written notice of the proposed sale, authorization of the court is required before the files and client-specific information relating to the representation of those clients may be disclosed by the seller to the purchaser and before counsel may be substituted.

A lawyer or law firm selling a practice cannot be required to remain in practice just because some clients cannot be served with written notice of the proposed sale. Because these clients cannot themselves consent to the substitution of counsel or direct any other disposition of their representations and files, with regard to clients whose matters involve pending litigation the rule requires an order from the court authorizing the substitution (or withdrawal) of counsel. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the substitution of counsel so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. If, however, the court fails to grant substitution of counsel in a matter involving pending litigation, that matter may not be included in the sale and the sale may be consummated without inclusion of that matter.

The rule provides that matters not involving pending litigation of clients who could not be served with written notice may not be included in the sale. This is because the clients' consent to disclosure of confidential information and to substitution of counsel cannot be obtained and because the alternative of court authorization ordinarily is not available in matters not involving pending litigation. Although these matters may not be included in the sale, the sale may be consummated without inclusion of those matters.

If a client objects to the proposed substitution of counsel, the rule treats the seller as attempting to withdraw from representation of that client and, therefore, provides that the seller must comply with the provisions of rule 4-1.16 concerning withdrawal from representation. Additionally, the seller must comply with applicable requirements of law or rules of procedure.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or an area of practice.

Fee arrangements between client and purchaser

The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. This obligation of the purchaser is a factor that can be taken into account by seller and purchaser when negotiating the sale price of the practice.

Other applicable ethical standards

Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client for all matters pending at the time of the sale. These include, for example, the seller's ethical obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 4-1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see rule 4-1.7 regarding conflicts and see the terminology section of the preamble for the definition of informed consent); and the obligation to protect information relating to the representation (see rules 4-1.6, 4-1.8(b), and 4-1.9(b) and (c)). If the terms of the sale involve the division between purchaser and seller of fees from matters that arise subsequent to the sale, the fee-division provisions of rule 4-1.5 must be satisfied with respect to these fees. These provisions will not apply to the division of fees from matters pending at the time of sale.

If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, approval must be obtained before the matter can be included in the sale (see rule 4-1.16).

Applicability of this rule

This rule applies, among other situations, to the sale of a law practice by representatives of a lawyer who is deceased, disabled, or has disappeared. It is possible that a nonlawyer, who is not subject to the Rules of Professional Conduct, might be involved in the sale. When the practice of a lawyer who is deceased, is disabled, or has disappeared is being sold, the notice required by subdivision (b) of this rule must be given by someone who is legally authorized to act on the selling lawyer's behalf, for example, a personal representative or a guardian. This is because the sale of a practice and transfer of representation involve legal rights of the affected clients.

Bona fide admission to, withdrawal from, or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended July 7, 2011, effective October 1, 2011 (SC10-1968). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 4-1.18 DUTIES TO PROSPECTIVE CLIENT

(a) Prospective Client. A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Confidentiality of Information. Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client may not use or reveal that information, except as rule 4-1.9 would permit with respect to information of a former client.

(c) Subsequent Representation. A lawyer subject to subdivision (b) may not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be used to the disadvantage of that person in the matter, except as provided in subdivision (d). If a lawyer is disqualified from representation under this rule, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter, except as provided in subdivision (d).

(d) Permissible Representation. When the lawyer has received disqualifying information as defined in subdivision (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(A) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(B) written notice is promptly given to the prospective client.

Comment

Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and the lawyer sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of subdivision (a).

It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn this information to determine whether there is a conflict of interest with

an existing client and whether the matter is one that the lawyer is willing to undertake. Subdivision (b) prohibits the lawyer from using or revealing that information, except as permitted by rule 4-1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether to undertake a new matter should limit the initial consultation to only information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under rule 4-1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See terminology for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

Even in the absence of an agreement, under subdivision (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be used to the disadvantage of the prospective client in the matter.

Under subdivision (c), the prohibition in this rule is imputed to other lawyers as provided in rule 4-1.10, but, under subdivision (d)(1), the prohibition and its imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, the prohibition and its imputation may be avoided if the conditions of subdivision (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See terminology (requirements for screening procedures). Subdivision (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

The duties under this rule presume that the prospective client consults the lawyer in good faith. A person who consults a lawyer simply with the intent of disqualifying the lawyer from the matter, with no intent of possibly hiring the lawyer, has engaged in a sham and should not be able to invoke this rule to create a disqualification.

For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see rule 4-1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see chapter 5, Rules Regulating The Florida Bar.

Added March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); Amended November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 4-1.19 COLLABORATIVE LAW PROCESS IN FAMILY LAW

(a) Duty to Explain Process to Client. A lawyer must obtain the informed consent of a client in a family law matter before proceeding in the collaborative law process after providing the client with sufficient information about the collaborative law process, including, but not limited to, the following:

- (1) the material benefits and risks of using the collaborative law process to resolve a family law matter;
- (2) the nature and scope of the matter to be resolved through the collaborative law process;
- (3) alternatives to the collaborative law process;
- (4) that participation in the collaborative law process is voluntary and any client may unilaterally terminate the collaborative law process for any reason;
- (5) that the collaborative law process will terminate if any participating client initiates a proceeding or seeks court intervention in a pending proceeding related to the collaborative law matter after the clients have signed the collaborative law agreement;
- (6) limitations on the lawyer's participation in subsequent proceedings imposed by family law court rules on the collaborative law process; and
- (7) fees and costs the client can reasonably expect to incur in the collaborative law process, including the fees of the lawyers, mental health professionals, and financial professionals.

(b) Written Agreement Required. A lawyer is prohibited from representing a client in the collaborative process in a family law matter unless all participating lawyers and clients sign a written agreement that includes:

- (1) a statement of the clients' intent to resolve a matter through the collaborative law process under these rules;
- (2) a description of the nature and scope of the matter;
- (3) identification of the lawyers participating in the collaborative law process and which client(s) they represent;
- (4) that the clients will make timely, full, candid and informal disclosure of information related to the collaborative matter without formal discovery and will promptly update previously disclosed information that has materially changed;

(5) that participation in the collaborative law process is voluntary and any client may unilaterally terminate the collaborative law process for any reason;

(6) that the collaborative law process will terminate if any participating client initiates a proceeding or seeks court intervention in a pending proceeding related to the collaborative law matter after the clients have signed the collaborative law agreement; and

(7) that the clients understand that their lawyers may not represent the clients or any other person before a court in a proceeding related to the collaborative law matter except as provided by court rule.

(c) Duty to Address Domestic Violence. A lawyer must reasonably inquire whether a client has a history of any coercive or violent relationship with another party in a family law matter before agreeing to represent a client in the collaborative law process and must make reasonable efforts to continue to assess whether a coercive or violent relationship exists between parties in a family law matter throughout the collaborative law process. A lawyer may not represent a client in the collaborative law process in a family law matter and must terminate the client-lawyer relationship in an existing collaborative law process in a family law matter if the lawyer reasonably believes that the lawyer's client has a history of any coercive or violent relationship with another party in the matter unless:

(1) the client requests to begin or continue the collaborative law process; and

(2) the lawyer reasonably believes that the safety of the client can be protected during the collaborative law process.

Comment

The collaborative law process involves the nonadversarial resolution of disputes through voluntary settlement procedures. Florida statutes and court rules permit collaborative law to resolve disputes in family law. Lawyers engaging in the collaborative law process in family law matters must comply with legislative and court requirements regarding the process. As part of this nonadversarial and voluntary resolution of disputes, lawyers who engage in the collaborative law process in a family law matter, and any other lawyers in that lawyer's firm, may not afterwards represent any party in any related proceeding except to request that a court approve the settlement reached during the collaborative law process or in specified emergency situations in accordance with family law court rules.

Before agreeing with the client to proceed in the collaborative law process in a family law matter, a lawyer should first consider whether a client is an appropriate candidate for the collaborative law process and must provide the client with sufficient information regarding the benefits and risks of the process, including the lawyer's limitations regarding subsequent proceedings. See also rules 4-1.4 and 4-1.2. To determine whether a client is a good candidate for the collaborative law process, the lawyer must inquire regarding any history of coercive or violent relationships with any other persons who would be parties to the collaborative law process in the family law matter. See also rules 4-1.1 and 4-1.2. The lawyer also must provide the client with information about other reasonably available alternatives to resolve the family law matter, which may include litigation, mediation, arbitration, or expert evaluation. See also rule

4-1.4. The lawyer should assess whether the client is likely to cooperate in voluntary discovery and discuss that process with the client. See rules 4-1.1 and 4-1.2. The lawyer should also advise the client that the collaborative law process will terminate if any party initiates litigation or other court intervention in the matter after signing a collaborative law agreement. *Id.* The lawyer should discuss with the client the fact that the collaborative law process is voluntary and any party to a collaborative law agreement may terminate the process at any time. *Id.* The lawyer must provide the client with information about costs the client can reasonably expect to incur, including fees and costs of all professionals involved. See rules 4-1.4 and 4-1.5.

An agreement between a lawyer and client to engage in the collaborative law process is a form of limited representation which must comply with all requirements of limited scope representations, including the requirement that the client must give informed consent in writing. See rule 4-1.2(c). The agreement between lawyer and client should include the nature and scope of the matter to be resolved through the collaborative law process, the material benefits and risks to participating in the collaborative law process, and the limitations on the lawyer's representation.

If a client agrees to participate in the collaborative law process and then terminates the process or initiates litigation regarding the dispute, the lawyer should terminate the representation. See rule 4-1.16.

Added May 18, 2017, effective July 1, 2017 (SC16-1685); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

4-2. COUNSELOR

RULE 4-2.1 ADVISER

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Comment

Scope of advice

A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral adviser as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as adviser may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering advice

In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under rule 4-1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under rule 4-1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-2.2 OPEN/VACANT

Formerly amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Deleted March 23, 2006, effective May 22, 2006 (SC04-2246).

RULE 4-2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) When Lawyer May Provide Evaluation. A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if:

- (1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and
- (2) the client gives informed consent.

(b) Limitation on Scope of Evaluation. In reporting the evaluation, the lawyer shall indicate any material limitations that were imposed on the scope of the inquiry or on the disclosure of information.

(c) Maintaining Client Confidences. Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by rule 4-1.6.

Comment

Definition

An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to third person

When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as an advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and disclosure of information

The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically

excluded or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If, after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this rule. See rule 4-4.1.

Financial auditors' requests for information

When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) Definition. A lawyer serves as a third-party neutral when the lawyer assists 2 or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) Communication With Unrepresented Parties. A lawyer serving as a third-party neutral must inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer must explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decision-maker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to

third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and Association for Conflict Resolution. A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to certified or court-appointed mediators.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.

Added March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); Amended November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

4-3. ADVOCATE

RULE 4-3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always

clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law.

The lawyer's obligations under this rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) Ex Parte Proceedings. In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.

Comment

This rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See terminology for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subdivision (a)(4) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present a disinterested exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Lawyers who represent clients in alternative dispute resolution processes are governed by the Rules of Professional Conduct. When the dispute resolution process takes place before a tribunal, as in binding arbitration (see terminology), the lawyer's duty of candor is governed by

rule 4-3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by rule 4-4.1.

Representations by a lawyer

An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with rule 4-1.2(d), see the comment to that rule. See also the comment to rule 4-8.4(b).

Misleading legal argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subdivision (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False evidence

Subdivision (a)(4) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in this rule apply to all lawyers, including defense counsel in criminal cases.

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact.

The rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process that the adversary system is designed to implement. See rule 4-1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Remedial measures

If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially if circumstances permit. In any case, the advocate should ensure disclosure is made to the court. It is for the court then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation. This commentary is not intended to address the situation where a client or prospective client seeks legal advice specifically about a defense to a charge of perjury where the lawyer did not represent the client at the time the client gave the testimony giving rise to the charge.

Refusing to offer proof believed to be false

Although subdivision (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate.

A lawyer may not assist the client or any witness in offering false testimony or other false evidence, nor may the lawyer permit the client or any other witness to testify falsely in the narrative form unless ordered to do so by the tribunal. If a lawyer knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the lawyer must threaten to disclose the client's intent to commit perjury to the judge. If the threat of disclosure does not successfully persuade the client to testify truthfully, the lawyer must disclose the fact that the client intends to lie to the tribunal and, per 4-1.6, information sufficient to prevent the commission of the crime of perjury.

The lawyer's duty not to assist witnesses, including the lawyer's own client, in offering false evidence stems from the Rules of Professional Conduct, Florida statutes, and caselaw.

Rule 4-1.2(d) prohibits the lawyer from assisting a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent.

Rule 4-3.4(b) prohibits a lawyer from fabricating evidence or assisting a witness to testify falsely.

Rule 4-8.4(a) prohibits the lawyer from violating the Rules of Professional Conduct or knowingly assisting another to do so.

Rule 4-8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Rule 4-8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 4-8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Rule 4-1.6(b) requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime.

This rule, 4-3.3(a)(2), requires a lawyer to reveal a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, and 4-3.3(a)(4) prohibits a lawyer from offering false evidence and requires the lawyer to take reasonable remedial measures when false material evidence has been offered.

Rule 4-1.16 prohibits a lawyer from representing a client if the representation will result in a violation of the Rules of Professional Conduct or law and permits the lawyer to withdraw from representation if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent or repugnant or imprudent. Rule 4-1.16(c) recognizes that notwithstanding good cause for terminating representation of a client, a lawyer is obliged to continue representation if so ordered by a tribunal.

To permit or assist a client or other witness to testify falsely is prohibited by section 837.02, Florida Statutes (1991), which makes perjury in an official proceeding a felony, and by section 777.011, Florida Statutes (1991), which proscribes aiding, abetting, or counseling commission of a felony.

Florida caselaw prohibits lawyers from presenting false testimony or evidence. *Kneale v. Williams*, 30 So. 2d 284 (Fla. 1947), states that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. *Dodd v. The Florida Bar*, 118 So. 2d 17 (Fla. 1960), reminds us that "the courts are . . . dependent on members of the bar to . . . present the true facts of each cause . . . to enable the judge or the jury to [decide the facts] to which the law may be applied. When an attorney . . . allows false testimony . . . [the attorney] . . . makes it impossible for the scales [of justice] to balance." See *The Fla. Bar v. Agar*, 394 So. 2d 405 (Fla. 1981), and *The Fla. Bar v. Simons*, 391 So. 2d 684 (Fla. 1980).

The United States Supreme Court in *Nix v. Whiteside*, 475 U.S. 157 (1986), answered in the negative the constitutional issue of whether it is ineffective assistance of counsel for an attorney to threaten disclosure of a client's (a criminal defendant's) intention to testify falsely.

Ex parte proceedings

Ordinarily, an advocate has the limited responsibility of presenting 1 side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary injunction, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Amended: March 8, 1990 (557 So.2d 1368); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); May 20, 2004 (SC03-705), (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer must not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to a witness for the time spent preparing for, attending, or testifying at proceedings;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party;

(e) in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused;

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless the person is a relative or an employee or other agent of a

client, and it is reasonable to believe that the person's interests will not be adversely affected by refraining from giving such information;

(g) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter; or

(h) present, participate in presenting, or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter.

Comment

The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Subdivision (a) applies to evidentiary material generally, including computerized information.

With regard to subdivision (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Previously, subdivision (e) also proscribed statements about the credibility of witnesses. However, in 2000, the Supreme Court of Florida entered an opinion in *Murphy v. International Robotic Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000), in which the court allowed counsel in closing argument to call a witness a "liar" or to state that the witness "lied."

There the court stated: "First, it is not improper for counsel to state during closing argument that a witness 'lied' or is a 'liar,' provided such characterizations are supported by the record." *Murphy*, id., at 1028. Members of the bar are advised to check the status of the law in this area.

Subdivision (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also rule 4-4.2.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); October 6, 2005, effective Jan. 1, 2006 (SC05-206), (916 So.2d 655); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 4-3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) Influencing Decision Maker. A lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the rules of court.

(b) Communication with Judge or Official. In an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the cause with a judge or an official before whom the proceeding is pending except:

- (1) in the course of the official proceeding in the cause;
- (2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;
- (3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; or
- (4) as otherwise authorized by law.

(c) Disruption of Tribunal. A lawyer shall not engage in conduct intended to disrupt a tribunal.

(d) Communication With Jurors. A lawyer shall not:

- (1) before the trial of a case with which the lawyer is connected, communicate or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected;
- (2) during the trial of a case with which the lawyer is connected, communicate or cause another to communicate with any member of the jury;
- (3) during the trial of a case with which the lawyer is not connected, communicate or cause another to communicate with a juror concerning the case;
- (4) after dismissal of the jury in a case with which the lawyer is connected, initiate communication with or cause another to initiate communication with any juror regarding the trial except to determine whether the verdict may be subject to legal challenge; provided, a lawyer may not interview jurors for this purpose unless the lawyer has reason to believe that grounds for such challenge may exist; and provided further, before conducting any such interview the lawyer must file in the cause a notice of intention to interview setting forth the name of the juror or jurors to be interviewed. A copy of the notice must be delivered to the trial judge and opposing counsel a reasonable time before such interview. The provisions of this rule do not prohibit a lawyer from communicating with members of the venire or jurors in the course of official proceedings or as authorized by court rule or written order of the court.

Comment

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in Florida's Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-3.6 TRIAL PUBLICITY

(a) Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

(b) Statements of Third Parties. A lawyer shall not counsel or assist another person to make such a statement. Counsel shall exercise reasonable care to prevent investigators, employees, or other persons assisting in or associated with a case from making extrajudicial statements that are prohibited under this rule.

Comment

It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282).

RULE 4-3.7 LAWYER AS WITNESS

(a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client unless:

- (1) the testimony relates to an uncontested issue;
 - (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
 - (3) the testimony relates to the nature and value of legal services rendered in the case;
- or
- (4) disqualification of the lawyer would work substantial hardship on the client.

(b) Other Members of Law Firm as Witnesses. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by rule 4-1.7 or 4-1.9.

Comment

Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

The trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The combination of roles may prejudice another party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, subdivision (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified. Subdivision (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subdivisions (a)(2) and (3) recognize that, where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first-hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these 2 exceptions, subdivision (a)(4) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of

interest principles stated in rules 4-1.7, 4-1.9, and 4-1.10 have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, subdivision (b) permits the lawyer to do so except in situations involving a conflict of interest.

In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with rules 4-1.7 or 4-1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with rule 4-1.7. This would be true even though the lawyer might not be prohibited by subdivision (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by subdivision (a)(3) might be precluded from doing so by rule 4-1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See rule 4-1.7. If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, rule 4-1.10 disqualifies the firm also. See terminology for the definition of "confirmed in writing" and "informed consent."

Subdivision (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by subdivision (a). If, however, the testifying lawyer would also be disqualified by rule 4-1.7 or 4-1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by rule 4-1.10 unless the client gives informed consent under the conditions stated in rule 4-1.7.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as a right to a preliminary hearing;

(c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating

information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Comment

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations such as making a reasonable effort to assure that the accused has been advised of the right to and the procedure for obtaining counsel and has been given a reasonable opportunity to obtain counsel so that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. Florida has adopted the American Bar Association Standards of Criminal Justice Relating to Prosecution Function. This is the product of prolonged and careful deliberation by lawyers experienced in criminal prosecution and defense and should be consulted for further guidance. See also rule 4-3.3(d) governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of these obligations or systematic abuse of prosecutorial discretion could constitute a violation of rule 4-8.4.

Subdivision (b) does not apply to an accused appearing pro se with the approval of the tribunal, nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (c) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of rules 4-3.3(a) through (d), and 4-3.4(a) through (c).

Comment

In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with the tribunal honestly and in conformity with applicable rules of procedure. See rules 4-3.3(a) through (d), and 4-3.4(a) through (c).

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by rules 4-4.1 through 4-4.4.

Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

4-4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

Comment

Misrepresentation

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see rule 4-8.4.

Statements of fact

This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or fraud by client

Under rule 4-1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Subdivision (b) states a specific application of the principle set forth in rule 4-1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under subdivision (b) the lawyer is required to do so, unless the disclosure is prohibited by rule 4-1.6.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2005, effective May 22, 2006 (SC04-2246), (933 So.2d 417) (The court conformed the rule to the ABA model rule which was different from the proposal.

RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute or contract, and a copy must be provided to the person's lawyer.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of the time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Comment

This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after

commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4-8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is not used to indirectly violate the Rules of Professional Conduct. Also, a lawyer having independent justification for communicating with the other party is permitted to do so. Permitted communications include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4-3.4(f). In communication with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See rule 4-4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See terminology. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 4-4.3.

Amended: Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, Comment amended, effective Jan. 1, 1993 (605 So.2d 252); November 13, 2003, effective January 1, 2004, Case No. SC02-2035 (860 So.2d 394); March 23, 2004, effective May 22, 2006 (SC04-2246), (933 So.2d 417) ; May 20, 2004 (SC03-705) (875 So.2d 448); amended May 29, 2014, effective June 1, 2014 (SC12- 2234).

RULE 4-4.3 DEALING WITH UNREPRESENTED PERSONS

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or

reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see rule 4-1.13(d).

This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Amended: November 13, 2003, effective January 1, 2004, Case No. SC02-2035 (860 So.2d 394); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent must promptly notify the sender.

Comment

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all these rights, but they include legal restrictions on

methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subdivision (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an e-mail or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that a document or electronically stored information was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, “document or electronically stored information” includes, in addition to paper documents, e-mail and other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return the document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See rules 4-1.2 and 4-1.4.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

4-5. LAW FIRMS AND ASSOCIATIONS

RULE 4-5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer’s Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Subdivision (a) applies to lawyers who have managerial authority over the professional work of a firm. See terminology. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency, and lawyers who have intermediate managerial responsibilities in a firm. Subdivision (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Subdivision (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subdivision (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated supervising lawyer or special committee. See rule 4-5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the rules.

Subdivision (c) expresses a general principle of personal responsibility for acts of another. See also rule 4-8.4(a).

Subdivision (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer having supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the

work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of subdivision (b) on the part of the supervisory lawyer even though it does not entail a violation of subdivision (c) because there was no direction, ratification, or knowledge of the violation.

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, shareholder, member of a limited liability company, officer, director, manager, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.

The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See rule 4-5.2(a).

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) Rules of Professional Conduct Apply. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) Reliance on Supervisor's Opinion. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only 1 way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone

has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of 2 clients conflict under rule 4-1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

(a) Use of Titles by Nonlawyer Assistants. A person who uses the title of paralegal, legal assistant, or other similar term when offering or providing services to the public must work for or under the direction or supervision of a lawyer or law firm.

(b) Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

(1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, must make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the nonlawyer must make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer is responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer:

(A) orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(c) Ultimate Responsibility of Lawyer. Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer must review and be responsible for the work product of the paralegals or legal assistants.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals such as paralegals and legal assistants. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the

lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. The measures employed in supervising nonlawyers should take account of the level of their legal training and the fact that they are not subject to professional discipline. If an activity requires the independent judgment and participation of the lawyer, it cannot be properly delegated to a nonlawyer employee.

Subdivision (b)(1) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See comment to rule 1.1 (retaining lawyers outside the firm) and comment to rule 4-5.1 (responsibilities with respect to lawyers within a firm). Subdivision (b)(2) applies to lawyers who have supervisory authority over nonlawyers within or outside the firm. Subdivision (b)(3) specifies the circumstances in which a lawyer is responsible for conduct of nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nothing provided in this rule should be interpreted to mean that a nonlawyer may have any ownership or partnership interest in a law firm, which is prohibited by rule 4-5.4. Additionally, this rule does not permit a lawyer to accept employment by a nonlawyer or group of nonlawyers, the purpose of which is to provide the supervision required under this rule. This conduct is prohibited by rules 4-5.4 and 4-5.5.

Nonlawyers Outside the Firm

A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using these services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend on the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also rules 4-1.1 (competence), 4-1.2 (allocation of authority), 4-1.4 (communication with client), 4-1.6 (confidentiality), 4-5.4 (professional independence of the lawyer), and 4-5.5 (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making

this allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these rules.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417). Amended June 11, 2015, effective October 1, 2015.

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;

(4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and

(5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.

(b) Qualified Pension Plans. A lawyer or law firm may include nonlawyer employees in a qualified pension, profit-sharing, or retirement plan, even though the lawyer's or law firm's contribution to the plan is based in whole or in part on a profit-sharing arrangement.

(c) Partnership with Nonlawyer. A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(d) Exercise of Independent Professional Judgment. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment

The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subdivision (d), such arrangements should not interfere with the lawyer's professional judgment.

This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.

Amended: June 8, 1989 (544 So.2d 193); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); June 27, 1996, effective July 1, 1996 (677 So.2d 272); October 6, 2005, effective January 1, 2006 (SC05-206) (2005 WL 2456201) (916 So.2d 655); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417).

RULE 4-5.5 UNLICENSED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) Practice of Law. A lawyer may not practice law in a jurisdiction other than the lawyer's home state, in violation of the regulation of the legal profession in that jurisdiction, or in violation of the regulation of the legal profession in the lawyer's home state or assist another in doing so.

(b) Prohibited Conduct. A lawyer who is not admitted to practice in Florida may not:

(1) except as authorized by other law, establish an office or other regular presence in Florida for the practice of law;

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida; or

(3) appear in court, before an administrative agency, or before any other tribunal unless authorized to do so by the court, administrative agency, or tribunal pursuant to the applicable rules of the court, administrative agency, or tribunal.

(c) Authorized Temporary Practice by Lawyer Admitted in Another United States Jurisdiction. A lawyer admitted and authorized to practice law in another United States jurisdiction who has been neither disbarred or suspended from practice in any jurisdiction, nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule, may provide legal services on a temporary basis in Florida that are:

(1) undertaken in association with a lawyer who is admitted to practice in Florida and who actively participates in the matter; or

(2) in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer is authorized by law or order to appear in the proceeding or reasonably expects to be so authorized; or

(3) in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, and the services are not services for which the forum requires pro hac vice admission:

(A) if the services are performed for a client who resides in or has an office in the lawyer's home state, or

(B) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(4) not within subdivisions (c)(2) or (c)(3), and

(A) are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice, or

(B) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) Authorized Temporary Practice by Lawyer Admitted in a Non-United States Jurisdiction. A lawyer who is admitted only in a non-United States jurisdiction who is a member in good standing of a recognized legal profession in a foreign jurisdiction whose members are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, and who has been neither disbarred or suspended from practice in any jurisdiction nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule does not engage in the unlicensed practice of law in Florida when on a temporary basis the lawyer performs services in Florida that are:

(1) undertaken in association with a lawyer who is admitted to practice in Florida and who actively participates in the matter; or

(2) in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in the proceeding or reasonably expects to be so authorized; or

(3) in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding held or to be held in Florida or another jurisdiction and the services are not services for which the forum requires pro hac vice admission

(A) if the services are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is admitted to practice, or

(B) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(4) not within subdivisions (d)(2) or (d)(3), and

(A) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization, or

(B) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) governed primarily by international law or the law of a non-United States jurisdiction in which the lawyer is a member.

Comment

Subdivision (a) applies to unlicensed practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Regardless of whether the lawyer is admitted to practice law on a regular basis or is practicing as the result of an authorization granted by court rule or order or by the law, the lawyer must comply with the standards of ethical and professional conduct set forth in these Rules Regulating the Florida Bar.

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See rule 4-5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Other than as authorized by law, a lawyer who is not admitted to practice in Florida violates subdivision (b) if the lawyer establishes an office or other regular presence in Florida for the practice of law. This prohibition includes establishing an office or other regular presence in Florida for the practice of the law of the state where the lawyer is admitted to practice. For example, a lawyer licensed to practice law in New York could not establish an office or regular presence in Florida to practice New York law. Such activity would constitute the unlicensed practice of law. However, for purposes of this rule, a lawyer licensed in another jurisdiction who is in Florida for vacation or for a limited period of time, may provide services to their clients in the jurisdiction where admitted as this does not constitute a regular presence. The lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida. Presence may be regular even if the lawyer is not physically present here.

Subdivision (b) also prohibits a lawyer who is not admitted to practice in Florida from appearing in a Florida court, before an administrative agency, or before any other tribunal in Florida unless the lawyer has been granted permission to do so. In order to be granted the permission, the lawyer must follow the applicable rules of the court, agency, or tribunal including, without limitation, the Florida Rules of Judicial Administration governing appearance by foreign lawyers. While admission by the Florida court or administrative agency for the particular case authorizes the lawyer's appearance in the matter, it does not act as authorization to allow the establishment of an office in Florida for the practice of law. Therefore, a lawyer licensed in another jurisdiction admitted in a case in Florida may not establish an office in Florida while the case is pending and the lawyer is working on the case.

There are occasions in which a lawyer admitted and authorized to practice in another United States jurisdiction or in a non-United States jurisdiction may provide legal services on a temporary basis in Florida under circumstances that do not create an unreasonable risk to the interests of his or her clients, the public, or the courts. Subdivisions (c) and (d) identify these circumstances. As discussed with regard to subdivision (b) above, this rule does not authorize a lawyer to establish an office or other regular presence in Florida without being admitted to practice generally here. Furthermore, no lawyer is authorized to provide legal services pursuant to this rule if the lawyer is disbarred or suspended from practice in any jurisdiction or has been disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule. The contempt must be final and not reversed or abated.

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in Florida and may therefore be permissible under subdivision (c). Services may be "temporary" even though the lawyer provides services in Florida on a recurring basis or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subdivision (c) applies to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory, or commonwealth of the United States. The word "admitted" in subdivision (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice because, for example, the lawyer is on inactive status. Subdivision (d) applies to lawyers who are admitted to practice law in a non-

United States jurisdiction if the lawyer is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority. Due to the similarities between the subsections, they will be discussed together. Differences will be noted.

Subdivisions (c)(1) and (d)(1) recognize that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in Florida. For these subdivisions to apply, the lawyer admitted to practice in Florida could not serve merely as a conduit for the out-of-state lawyer, but would have to share actual responsibility for the representation and actively participate in the representation. To the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing in court or before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

Lawyers not admitted to practice generally in Florida may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to formal rules of the agency. Under subdivision (c)(2), a lawyer does not violate this rule when the lawyer appears before a tribunal or agency pursuant to this authority. As with subdivisions (c)(1) and (d)(1), to the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing in court or before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

Subdivision (c)(2) also provides that a lawyer rendering services in Florida on a temporary basis does not violate this rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of this conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in Florida in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in Florida.

Subdivision (d)(2) is similar to subdivision (c)(2), however, the authorization in (d)(2) only applies to pending or potential proceedings before a tribunal to be held outside of the United States.

Subdivisions (c)(3) and (d)(3) permit a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in Florida if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are performed for a client who resides in or has an office in the lawyer's home state, or if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation if court rules or law so require. The lawyer must file a verified

statement with The Florida Bar in arbitration proceedings as required by rule 1-3.11 unless the lawyer is appearing in an international arbitration as defined in the comment to that rule. A verified statement is not required if the lawyer first obtained the court's permission to appear pro hac vice and the court has retained jurisdiction over the matter. For the purposes of this rule, a lawyer who is not admitted to practice law in Florida who files more than 3 demands for arbitration or responses to arbitration in separate arbitration proceedings in a 365-day period is presumed to be providing legal services on a regular, not temporary, basis; however, this presumption does not apply to a lawyer appearing in international arbitrations as defined in the comment to rule 1-3.11.

Subdivision (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in Florida that are performed for a client who resides or has an office in the jurisdiction in which the lawyer is authorized to practice or arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within subdivisions (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. When performing services which may be performed by nonlawyers, the lawyer remains subject to the Rules of Professional Conduct.

Subdivisions (c)(3), (d)(3), and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence this relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, for example when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through regular practice of law in a body of law that is applicable to the client's particular matter.

Subdivision (d)(4) permits a lawyer admitted in a non-United States jurisdiction to provide certain services on a temporary basis in Florida that are performed for a client who resides in or has an office in the jurisdiction where the lawyer is authorized to practice or arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization but are not within subdivisions (d)(2) and (d)(3). The scope of the work the lawyer could perform under this provision would be limited to the services the lawyer may perform in the authorizing jurisdiction. For example, if a German lawyer came to the United States to negotiate on behalf of a client in Germany, the lawyer would be authorized to provide only those services that the lawyer is authorized to provide for that client in Germany. Subdivision (d)(5) permits a lawyer admitted in a non-United States jurisdiction to provide services in Florida that are governed primarily by international law or the law of a non-United States jurisdiction in which the lawyer is a member.

A lawyer who practices law in Florida pursuant to subdivisions (c), (d), or otherwise is subject to the disciplinary authority of Florida. A lawyer who practices law in Florida pursuant to subdivision (c) must inform the client that the lawyer is not licensed to practice law in Florida.

The Supreme Court of Florida has determined that it constitutes the unlicensed practice of law for a lawyer admitted to practice law in a jurisdiction other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide. The rule was adopted in 820 So. 2d 210 (Fla. 2002). The court first stated the proposition in 762 So. 2d 392, 394 (Fla. 1999). Subdivisions (c) and (d) do not authorize advertising legal services in Florida by lawyers who are admitted to practice in jurisdictions other than Florida. Whether and how lawyers may communicate the availability of their services in Florida is governed by subchapter 4-7.

A lawyer who practices law in Florida is subject to the disciplinary authority of Florida.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). May 12, 2005 to be effective Jan. 1, 2006; emergency order issued Sept. 14, 2005, effective immediately due to Hurricane Katrina; amended September 11, 2008, effective January 1, 2009, (SC07-1844), (991 So.2d 842). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 4-5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy, but also limits the freedom of clients to choose a lawyer. Subdivision (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Subdivision (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

This rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice in accordance with the provisions of rule 4-1.17.

This rule is not a per se prohibition against severance agreements between lawyers and law firms. Severance agreements containing reasonable and fair compensation provisions designed to avoid disputes requiring time-consuming quantum meruit analysis are not prohibited by this rule. Severance agreements, on the other hand, that contain punitive clauses, the effect of which

are to restrict competition or encroach upon a client's inherent right to select counsel, are prohibited. The percentage limitations found in rule 4-1.5(f)(4)(D) do not apply to fees divided pursuant to a severance agreement. No severance agreement shall contain a fee-splitting arrangement that results in a fee prohibited by the Rules Regulating The Florida Bar.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). July 17, 1997 (697 So.2d 115); March 23, 2006, effective May 22, 2006 (SC04-2246) (933 So.2d 417).

RULE 4-5.7 RESPONSIBILITIES REGARDING NONLEGAL SERVICES

(a) Services Not Distinct From Legal Services. A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules Regulating The Florida Bar with respect to the provision of both legal and nonlegal services.

(b) Services Distinct From Legal Services. A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(c) Services by Nonlegal Entity. A lawyer who is an owner, controlling party, employee, agent, or otherwise is affiliated with an entity providing nonlegal services to a recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(d) Effect of Disclosure of Nature of Service. Subdivision (b) or (c) does not apply if the lawyer makes reasonable efforts to avoid any misunderstanding by the recipient receiving nonlegal services. Those efforts must include advising the recipient, preferably in writing, that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the provision of nonlegal services to the recipient.

Comment

For many years, lawyers have provided to their clients nonlegal services that are ancillary to the practice of law. A broad range of economic and other interests of clients may be served by lawyers participating in the delivery of these services. In recent years, however, there has been significant debate about the role the rules of professional conduct should play in regulating the degree and manner in which a lawyer participates in the delivery of nonlegal services. The ABA, for example, adopted, repealed, and then adopted a different version of ABA Model Rule 5.7. In the course of this debate, several ABA sections offered competing versions of ABA Model Rule 5.7.

One approach to the issue of nonlegal services is to try to substantively limit the type of nonlegal services a lawyer may provide to a recipient or the manner in which the services are provided. A competing approach does not try to substantively limit the lawyer's provision of

nonlegal services, but instead attempts to clarify the conduct to which the Rules Regulating The Florida Bar apply and to avoid misunderstanding on the part of the recipient of the nonlegal services. This rule adopts the latter approach.

The potential for misunderstanding

Whenever a lawyer directly provides nonlegal services, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the nonlegal services are performed may fail to understand that the services may not carry with them the protection normally afforded by the client-lawyer relationship. The recipient of the nonlegal services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of nonlegal services when that may not be the case. The risk of confusion is acute especially when the lawyer renders both types of services with respect to the same matter.

Providing nonlegal services that are not distinct from legal services

Under some circumstances, the legal and nonlegal services may be so closely entwined that they cannot be distinguished from each other. In this situation, confusion by the recipient as to when the protection of the client-lawyer relationship applies is likely to be unavoidable. Therefore, this rule requires that the lawyer providing the nonlegal services adhere to all of the requirements of the Rules Regulating The Florida Bar.

In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required elsewhere in these Rules Regulating The Florida Bar, that of nonlawyer employees comply in all respects with the Rules Regulating The Florida Bar. When a lawyer is obliged to accord the recipients of such nonlegal services the protection of those rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules Regulating The Florida Bar addressing conflict of interest and to scrupulously adhere to the requirements of the rule relating to disclosure of confidential information. The promotion of the nonlegal services must also in all respects comply with the Rules Regulating The Florida Bar dealing with advertising and solicitation.

Subdivision (a) of this rule applies to the provision of nonlegal services by a lawyer even when the lawyer does not personally provide any legal services to the person for whom the nonlegal services are performed if the person is also receiving legal services from another lawyer that are not distinct from the nonlegal services.

Avoiding misunderstanding when a lawyer directly provides nonlegal services that are distinct from legal services

Even when the lawyer believes that his or her provision of nonlegal services is distinct from any legal services provided to the recipient, there is still a risk that the recipient of the nonlegal services will misunderstand the implications of receiving nonlegal services from a lawyer; the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. Where there is such a risk of misunderstanding, this rule requires that the lawyer

providing the nonlegal services adhere to all the Rules Regulating The Florida Bar, unless exempted by other provisions of this rule.

Avoiding misunderstanding when a lawyer is indirectly involved in the provision of nonlegal services

Nonlegal services also may be provided through an entity with which a lawyer is somehow affiliated, for example, as owner, employee, controlling party, or agent. In this situation, there is still a risk that the recipient of the nonlegal services might believe that the recipient is receiving the protection of a client-lawyer relationship. Where there is such a risk of misunderstanding, this rule requires that the lawyer involved with the entity providing nonlegal services adhere to all the Rules Regulating The Florida Bar, unless exempted by another provision of this rule.

Avoiding the application of subdivisions (b) and (c)

Subdivisions (b) and (c) specify that the Rules Regulating The Florida Bar apply to a lawyer who directly provides or is otherwise involved in the provision of nonlegal services if there is a risk that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship. Neither the Rules Regulating The Florida Bar nor subdivisions (b) or (c) will apply, however, if pursuant to subdivision (d), the lawyer takes reasonable efforts to avoid any misunderstanding by the recipient. In this respect, this rule is analogous to the rule regarding respect for rights of third persons.

In taking the reasonable measures referred to in subdivision (d), the lawyer must communicate to the person receiving the nonlegal services that the relationship will not be a client-lawyer relationship. The communication should be made before entering into an agreement for the provision of nonlegal services, in a manner sufficient to assure that the person understands the significance of the communication, and preferably should be in writing.

The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of nonlegal services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and nonlegal services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

The relationship between this rule and other Rules Regulating The Florida Bar

Even before this rule was adopted, a lawyer involved in the provision of nonlegal services was subject to those Rules Regulating The Florida Bar that apply generally. For example, another provision of the Rules Regulating The Florida Bar makes a lawyer responsible for fraud committed with respect to the provision of nonlegal services. Such a lawyer must also comply with the rule regulating business transactions with a client. Nothing in this rule (Responsibilities Regarding Nonlegal Services) is intended to suspend the effect of any otherwise applicable Rules Regulating The Florida Bar, such as the rules on personal conflicts of interest, on business transactions with clients, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

In addition to the Rules Regulating The Florida Bar, principles of law external to the rules, for example, the law of principal and agent, may govern the legal duties owed by a lawyer to those receiving the nonlegal services.

Added effective April 25, 2002 (820 So.2d 210).

4-5.8 PROCEDURES FOR LAWYERS LEAVING LAW FIRMS AND DISSOLUTION OF LAW FIRMS

(a) Contractual Relationship Between Law Firm and Clients. The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.

(b) Client's Right to Counsel of Choice. Clients have the right to expect that they may choose counsel when legal services are required and, with few exceptions, nothing that lawyers and law firms do affects the exercise of that right.

(c) Contact With Clients.

(1) *Lawyers Leaving Law Firms.* Absent a specific agreement otherwise, a lawyer who is leaving a law firm may not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.

(2) *Dissolution of Law Firm.* Absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm may not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

(d) Form for Contact With Clients.

(1) *Lawyers Leaving Law Firms.* When a joint response has not been successfully negotiated, unilateral contact by individual members or the law firm must give notice to clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms.

(2) *Dissolution of Law Firms.* When a law firm is being dissolved and no procedure for contacting clients has been agreed to, unilateral contact by members of the law firm must give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(3) *Liability for Fees and Costs.* In all instances, notice to the client required under this rule must provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled. In addition, if appropriate, notice must be given that reasonable charges may be imposed to provide a copy of any file to a successor lawyer.

(e) Nonresponsive Clients.

(1) *Lawyers Leaving Law Firms.* In the event a client fails to advise the lawyers and law firm of the client's intention in regard to who is to provide future legal services when a lawyer is leaving the firm, the client remains a client of the firm until the client advises otherwise.

(2) *Dissolution of Law Firms.* In the event a client fails to advise the lawyers of the client's intention in regard to who is to provide future legal services when a law firm is dissolving, the client remains a client of the lawyer who primarily provided the prior legal services on behalf of the firm until the client advises otherwise.

Comment

The current rule of law regarding ownership of client files is discussed in *Donahue v. Vaughn*, 721 So. 2d 356 (Fla. 5th DCA 1998), and *Dowda & Fields, P.A. v. Cobb*, 452 So. 2d 1140 (Fla. 5th DCA 1984). A lawyer leaving a law firm, when the law firm remains available to continue legal representation, has no right nor expectation to take client files without an agreement with the law firm to do so.

While clients have the right to choose counsel, that choice may implicate obligations such as a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file.

Whether individual members have any individual legal obligations to a client is a matter of contract law, tort law, or court rules that is outside the scope of rules governing lawyer conduct. Generally, individual lawyers have such obligations only if provided for in the contract for representation. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to clients as provided elsewhere in these rules.

In most instances a lawyer leaving a law firm and the law firm should engage in bona fide, good faith negotiations and craft a joint communication providing adequate information to the client so that the client may make a fully informed decision concerning future representation. In those instances in which bona fide negotiations are unsuccessful, unilateral communication may be made by the departing lawyer or the law firm. In those circumstances, great care should be taken to meet the obligation of adequate communication and for this reason the specific requirements of subdivisions (d)(1) and (3) are provided.

Lawyers and firms should engage in bona fide, good faith negotiations within a reasonable period of time following their knowledge of either the anticipated change in firm composition or, if the anticipated change is unknown, within a reasonable period of time after the change in firm composition. The actual notification to clients should also occur within a reasonable period of

time. What is reasonable will depend on the circumstances, including the nature of the matters in which the lawyer represented the clients and whether the affected clients have deadlines that need to be met within a short period of time.

For purposes of this rule, clients who should be notified of the change in firm composition include current clients for whom the departing lawyer has provided significant legal services with direct client contact. Clients need not be notified of the departure of a lawyer with whom the client has had no direct contact. Clients whose files are closed need not be notified unless the former client contacts the firm, at which point the firm should notify the former client of the departure of any lawyer who performed significant legal services for that former client and had direct contact with that former client.

Although contact by telephone is not prohibited under this rule, proof of compliance with the requirements of this rule may be difficult unless the notification is in writing.

In order to comply with the requirements of this rule, both departing lawyers and the law firm should be given access to the names and contact information of all clients for whom the departing lawyer has provided significant legal services and with whom the lawyer has had direct contact.

If neither the departing lawyer nor the law firm intends to continue representation of the affected clients, they may either agree on a joint letter providing that information to those clients, or may separately notify the affected clients after bona fide, good faith negotiations have failed. Any obligation to give the client reasonable notice, protect the client's interests on withdrawal, and seek permission of a court to withdraw may apply to both the departing lawyer and lawyers remaining in the firm.

Most law firms have some written instrument creating the law firm and specifying procedures to be employed upon dissolution of the firm. However, when such an instrument does not exist or does not adequately provide for procedures in the event of dissolution, the provisions of this rule are provided so that dissolution of the law firm does not disproportionately affect client rights.

As in instances of a lawyer departing a law firm, lawyers involved in the dissolution of law firms have a continuing obligation to provide adequate information to a client so that the client may make informed decisions concerning future representation.

The Florida Bar has sample forms for notice to clients and sample partnership and other contracts that are available to members. The forms may be accessed on the bar's website, www.floridabar.org, or by calling The Florida Bar headquarters in Tallahassee.

Lawyers involved in either a change in law firm composition or law firm dissolution may have duties to notify the court if the representation is in litigation. If the remaining law firm will continue the representation of the client, no notification of the change in firm composition to the court may be required, but such a notification may be advisable. If the departing lawyer will take over representation of the client, a motion for substitution of counsel or a motion by the firm to withdraw from the representation may be appropriate. If the departing lawyer and the law firm have made the appropriate request for the client to select either the departing lawyer or the

law firm to continue the representation, but the client has not yet responded, the law firm should consider notifying the court of the change in firm composition, although under ordinary circumstances, absent an agreement to the contrary, the firm will continue the representation in the interim. If the departing lawyer and the law firm have agreed regarding who will continue handling the client's matters then, absent disagreement by the client, the agreement normally will determine whether the departing lawyer or the law firm will continue the representation.

Adopted effective January 1, 2006 (SC05-206) from revised supreme court opinion issued on December 8, 2005, original opinion issued October 6, 2005 (916 So.2d 655), amended November 9, 2017, effective February 1, 2018; amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

4-6. PUBLIC SERVICE

RULE 4-6.1 PRO BONO PUBLIC SERVICE

(a) Professional Responsibility. Each member of The Florida Bar in good standing, as part of that member's professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor. This professional responsibility does not apply to members of the judiciary or their staffs or to government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions. Neither does this professional responsibility apply to those members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline.

(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor may be discharged by:

- (1) annually providing at least 20 hours of pro bono legal service to the poor; or
- (2) making an annual contribution of at least \$350 to a legal aid organization.

(c) Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. Each member of the bar should strive to individually satisfy the member's professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been filed previously with the circuit pro bono committee and only when providing pro bono legal service to the poor:

- (1) in a major case or matter involving a substantial expenditure of time and resources;
or
- (2) through a full-time community or public service staff; or
- (3) in any other manner that has been approved by the circuit pro bono committee in the circuit in which the firm practices.

(d) Reporting Requirement. Each member of the bar shall annually report whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall report this information through a simplified reporting form that is made a part of the member's annual membership fees statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services to the poor:

(1) I have personally provided _____ hours of pro bono legal services;

(2) I have provided pro bono legal services collectively by: (indicate type of case and manner in which service was provided);

(3) I have contributed \$_____ to: (indicate organization to which funds were provided);

(4) I have provided legal services to the poor in the following special manner: (indicate manner in which services were provided); or

(5) I have been unable to provide pro bono legal services to the poor this year; or

(6) I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule, or regulation from providing services; retired, or inactive).

The failure to report this information shall constitute a disciplinary offense under these rules.

(e) Credit Toward Professional Responsibility in Future Years. In the event that more than 20 hours of pro bono legal service to the poor are provided and reported in any 1 year, the hours in excess of 20 hours may be carried forward and reported as such for up to 2 succeeding years for the purpose of determining whether a lawyer has fulfilled the professional responsibility to provide pro bono legal service to the poor in those succeeding years.

(f) Out-of-State Members of the Bar. Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside.

Comment

Pro bono legal service to the poor is an integral and particular part of a lawyer's pro bono public service responsibility. As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor, or of moderate means. However, because the legal problems of the poor often involve areas of basic need, their inability to obtain legal services can have dire consequences. The vast unmet legal needs of the poor in Florida have been recognized by the Supreme Court of Florida and by several studies undertaken in Florida over the past two decades. The Supreme Court of Florida has further recognized the necessity of finding a solution to the problem of providing the poor greater access to legal service and the unique role of lawyers in our adversarial system of representing and defending

persons against the actions and conduct of governmental entities, individuals, and nongovernmental entities. As an officer of the court, each member of The Florida Bar in good standing has a professional responsibility to provide pro bono legal service to the poor. Certain lawyers, however, are prohibited from performing legal services by constitutional, statutory, rule, or other regulatory prohibitions. Consequently, members of the judiciary and their staffs, government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions, members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline are deferred from participation in this program.

In discharging the professional responsibility to provide pro bono legal service to the poor, each lawyer should furnish a minimum of twenty hours of pro bono legal service to the poor annually or contribute \$350 to a legal aid organization. “Pro bono legal service” means legal service rendered without charge or expectation of a fee for the lawyer at the time the service commences. Legal services written off as bad debts do not qualify as pro bono service. Most pro bono service should involve civil proceedings given that government must provide indigent representation in most criminal matters. Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard but also to those persons frequently referred to as the “working poor.” Lawyers providing pro bono legal service on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. Pro bono legal service to the poor need not be provided only through legal services to individuals; it can also be provided through legal services to charitable, religious, or educational organizations whose overall mission and activities are designed predominately to address the needs of the poor. For example, legal service to organizations such as a church, civic, or community service organizations relating to a project seeking to address the problems of the poor would qualify.

While the personal involvement of each lawyer in the provision of pro bono legal service to the poor is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of legal service provided to the poor. The annual contribution alternative recognizes a lawyer’s professional responsibility to provide financial assistance to increase and improve the delivery of legal service to the poor when a lawyer cannot or decides not to provide legal service to the poor through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support. The limited provision allowing for collective satisfaction of the 20-hour standard recognizes the importance of encouraging law firms to undertake the pro bono legal representation of the poor in substantial, complex matters requiring significant expenditures of law firm resources and time and costs, such as class actions and post-conviction death penalty appeal cases, and through the establishment of full-time community or public service staffs. When a law firm uses collective satisfaction, the total hours of legal services provided in such substantial, complex matters or through a full-time community or public service staff should be credited among the firm’s lawyers in a fair and reasonable manner as determined by the firm.

The reporting requirement is designed to provide a sound basis for evaluating the results achieved by this rule, reveal the strengths and weaknesses of the pro bono plan, and to remind lawyers of their professional responsibility under this rule. The fourth alternative of the

reporting requirements allows members to indicate that they have fulfilled their service in some manner not specifically envisioned by the plan.

The 20-hour standard for the provision of pro bono legal service to the poor is a minimum. Additional hours of service are to be encouraged. Many lawyers will, as they have before the adoption of this rule, contribute many more hours than the minimum. To ensure that a lawyer receives credit for the time required to handle a particularly involved matter, this rule provides that the lawyer may carry forward, over the next 2 successive years, any time expended in excess of 20 hours in any 1 year.

Former Rule 4-6.1 deleted June 23, 1993, effective Oct. 1, 1993. New Rule 4- 6.1 adopted June 23, 1993, eff. Oct. 1, 1993 (630 So.2d 501). Amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 4-6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as when:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or of the law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono public service as provided in these rules. See rule 4-6.1. In the course of fulfilling a lawyer's obligation to provide legal services to the poor, a lawyer should not avoid or decline representation of a client simply because a client is unpopular or involved in unpopular matters. Although these rules do not contemplate court appointment as a primary means of achieving pro bono service, a lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see rule 4-1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the rules.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 23, 1993, effective Oct. 1, 1993 (630 So.2d 501).

RULE 4-6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to the client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under rule 4-1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment

Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also rule 4-1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly rule 4-1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially affected.

RULE 4-6.5 VOLUNTARY PRO BONO PLAN

(a) Purpose. The purpose of the voluntary pro bono lawyer plan is to increase the availability of legal service to the poor and expand pro bono legal service programs.

(b) Standing Committee on Pro Bono Legal Service. The president-elect of The Florida Bar appoints the standing committee on pro bono legal service to the poor.

(1) *Composition of the Standing Committee.* The standing committee consists of no more than 25 members and includes, but is not limited to:

(A) 5 past or current members of the board of governors The Florida Bar, 1 of whom is the chair or a member of the access to the legal system committee of the board of governors;

(B) 5 past or current directors of The Florida Bar Foundation;

(C) 1 trial judge and 1 appellate judge;

(D) 2 representatives of civil legal assistance providers;

(E) 2 representatives from local and statewide voluntary bar associations;

(F) 2 public members, 1 of whom is a representative of the poor;

(G) the president or designee of the Board of Directors of Florida Legal Services, Inc.;

(H) 1 representative of the Out-of-State Division of The Florida Bar; and

(I) the president or designee of the Young Lawyers Division of The Florida Bar.

(2) *Responsibilities of the Standing Committee.* The standing committee will:

(A) identify, encourage, support, and assist statewide and local pro bono projects and activities;

(B) receive reports from circuit committees submitted on standardized forms developed by the standing committee;

(C) review and evaluate circuit court pro bono plans;

(D) submit an annual report on the activities and results of the pro bono plan to the board of governors of The Florida Bar, the Florida Bar Foundation, and the Supreme Court of Florida;

(E) present to the board of governors of The Florida Bar and to the Supreme Court of Florida any suggested changes or modifications to the pro bono rules.

(c) Circuit Pro Bono Committees. The chief judge of each circuit, or the chief judge's designee, appoints the circuit pro bono committee members, and the committee will appoint its chair.

(1) *Composition of Circuit Court Pro Bono Committee.* Each circuit pro bono committee is composed of:

(A) the chief judge of the circuit or the chief judge's designee;

(B) to the extent feasible, 1 or more representatives from each voluntary bar association, including each federal bar association, recognized by The Florida Bar and 1 representative from each pro bono and legal assistance provider in the circuit nominated by the association or provider; and

(C) at least 1 public member and at least 1 client-eligible member nominated by the other members of the circuit pro bono committee.

Each circuit pro bono committee determines its own governance and terms of service.

(2) *Responsibilities of Circuit Pro Bono Committee.* The circuit pro bono committee will:

(A) prepare in written form a circuit pro bono plan after evaluating the needs of the circuit and making a determination of present available pro bono services;

(B) implement the plan and monitor its results;

(C) submit an annual report to The Florida Bar standing committee;

(D) use current legal assistance and pro bono programs in each circuit, to the extent possible, to implement and operate circuit pro bono plans and provide the necessary coordination and administrative support for the circuit pro bono committee;

(E) encourage more lawyers to participate in pro bono activities by preparing a plan that provides for various support and educational services for participating pro bono attorneys, which, to the extent possible, should include:

- (i) intake, screening, and referral of prospective clients;
- (ii) matching cases with individual lawyer expertise, including the establishment of practice area panels;
- (iii) resources for litigation and out-of-pocket expenses for pro bono cases;
- (iv) legal education and training for pro bono attorneys in particular areas of law useful in providing pro bono legal service;
- (v) consultation with lawyers who have expertise in areas of law with respect to which a volunteer lawyer is providing pro bono legal service;
- (vi) malpractice insurance for volunteer pro bono lawyers with respect to their pro bono legal service;
- (vii) procedures to ensure adequate monitoring and follow-up for assigned cases and to measure client satisfaction; and
- (viii) recognition of pro bono legal service by lawyers.

(d) Pro Bono Service Opportunities. The following are suggested pro bono service opportunities that should be included in each circuit plan:

- (1) represent clients through case referral;
- (2) interview prospective clients;
- (3) participate in pro se clinics and other clinics in which lawyers provide advice and counsel;
- (4) act as co-counsel on cases or matters with legal assistance providers and other pro bono lawyers;
- (5) provide consultation services to legal assistance providers for case reviews and evaluations;
- (6) participate in policy advocacy;
- (7) provide training to the staff of legal assistance providers and other volunteer pro bono attorneys;
- (8) make presentations to groups of poor persons regarding their rights and obligations under the law;
- (9) provide legal research;
- (10) provide guardian ad litem services;

(11) provide assistance in the formation and operation of legal entities for groups of poor persons; and

(12) serve as a mediator or arbitrator at no fee to the client-eligible party.

Added June 23, 1993, effective Oct. 1, 1993 (630 So.2d 501); Amended December 20, 2007, effective March 1, 2008 (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 4-6.6 SHORT-TERM LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to rules 4-1.7 and 4-1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to rule 4-1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by rule 4-1.7 or 4-1.9(a) with respect to the matter.

(b) Except as provided in subdivision (a)(2), rule 4-1.10 is inapplicable to a representation governed by this rule.

Comment

Legal services organizations, courts, government agencies, local and voluntary bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services, such as advice or the completion of legal forms, that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. These programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., rules 4-1.7, 4-1.9 and 4-1.10.

A lawyer who provides short-term limited legal services under this rule must obtain the client's informed consent to the limited scope of the representation. See rule 4-1.2(c). However, a lawyer is not required to obtain the consent in writing. *Id.* If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including rules 4-1.6 and 4-1.9(b) and (c), are applicable to the limited representation.

Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, subdivision (a) requires compliance with rules 4-1.7 or 4-1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with rule 4-1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by rules 4-1.7 or 4-1.9(a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, subdivision (b) provides that rule 4-1.10 is inapplicable to a representation governed by this rule except as provided by subdivision (a)(2). Subdivision (a)(2) requires the participating lawyer to comply with rule 4-1.10 when the lawyer knows that the lawyer's firm is disqualified by rules 4-1.7 or 4-1.9(a). Because of subdivision (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, rules 4-1.7, 4-1.9(a) and 4-1.10 become applicable.

Added November 20, 2017 (SC17-458).

4-7. INFORMATION ABOUT LEGAL SERVICES
RULE 4-7.1 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.2 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.3 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.4 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.5 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.6 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.7 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.8 OPEN/VACANT

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.9 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.10 OPEN/VACANT

Deleted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.11 APPLICATION OF RULES

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment

Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the

practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” *See Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and

(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement

appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Legibility. Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

Comment

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic Location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is “available for consultation” or “available by appointment” or has a “satellite” office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to Other Lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: “Your case may be referred to another lawyer.”

Language of Advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended March 8, 2018, effective April 30, 2018 (SC16-1470).

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising.

(a) Deceptive and Inherently Misleading Advertisements. An advertisement is deceptive or inherently misleading if it:

- (1) contains a material statement that is factually or legally inaccurate;
- (2) omits information that is necessary to prevent the information supplied from being misleading; or
- (3) implies the existence of a material nonexistent fact.

(b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

- (1) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;
- (2) references to past results unless the information is objectively verifiable, subject to rule 4-7.14;
- (3) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;
- (4) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;
- (5) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";
- (6) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN ACTUAL EVENT." When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: "ACTOR. NOT ACTUAL [. . . .]";
- (7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;
- (8) a testimonial:

(A) regarding matters on which the person making the testimonial is unqualified to evaluate;

(B) that is not the actual experience of the person making the testimonial;

(C) that is not representative of what clients of that lawyer or law firm generally experience;

(D) that has been written or drafted by the lawyer;

(E) in exchange for which the person making the testimonial has been given something of value; or

(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;

(9) a statement or implication that The Florida Bar has approved an advertisement or a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or

(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge...."

Comment

Material Omissions

An example of a material omission is stating "over 20 years' experience" when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states "over 20 years' experience" when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results

The prohibitions in subdivisions (b)(1) and (b)(2) of this rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client’s actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a

lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, “I have successfully represented clients,” or “I have won numerous appellate cases,” may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words “successful” or “won” in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word “successful” to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words “successful” or “won” to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client’s informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client’s informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client’s informed consent.

Comparisons

The prohibition against comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer’s law firm is “the best,” or “one of the best,” in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer’s personal attribute, but does not characterize the lawyer’s skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement “Our firm is the largest firm in this city that practices exclusively personal injury law,” is permissible if true, because the statement is objectively verifiable. Similarly, the statement, “I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit,” is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as “the best,” “second to none,” or “the finest” will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “I am dedicated to excellence in my representation of my clients,” is permissible as a goal. Similarly, the statement, “My goal is to provide high quality legal services,” is permissible.

Areas of Practice

This rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, “DRAMATIZATION. NOT AN ACTUAL EVENT.” For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the re-construction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer under rule 4-7.15.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in “combative and vicious tactics” that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, Executive, and Legislative Titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer’s name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one’s judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer’s name and is clearly modified by terms such as “former” or “retired.” For example, a former judge may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge.”

As another example, a former state representative may not include “Representative Smith (former)” or “Representative Smith, retired” in an advertisement, letterhead, or business card. However, a former representative may state, “John Smith, Florida Bar member, former state representative.”

Further, an accurate representation of one’s judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person’s name. For example, the statement “John Jones was governor of the State of Florida from [. . . years of service . . .]” would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge’s previous title of “Judge” in a pleading could be sanctioned.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended March 8, 2018, effective April 30, 2018 (SC16-1470).

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in potentially misleading advertising.

(a) Potentially Misleading Advertisements. Potentially misleading advertisements include, but are not limited to:

(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base such membership or recognition on a lawyer's ability or skill, unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified, a specialist, an expert, or other variations of those terms unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating the Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.

In the absence of such certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law; or

(5) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement

specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, Honors, and Ratings

Awards, honors and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of Board Certification, Specialization or Expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to indicate that. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as a "specialist," "specializing," "certified," "board certified," being an "expert," having "expertise," or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified, has expertise in, or specializes in any area of practice.

A lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may so state that, but may not state that the lawyer is certified, an expert in, or

specializes in personal injury. Similarly, a lawyer who is board certified in marital and family law may not state that the lawyer specializes in divorce.

Fee and Cost Information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

(a) uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client;

(b) uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer;

(c) contains the voice or image of a celebrity, except that a lawyer may use the voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm; or

(d) offers consumers an economic incentive to employ the lawyer or review the lawyer's advertising; provided that this rule does not prohibit a lawyer from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and does not prohibit the lawyer from offering free legal advice or information that might indirectly benefit a consumer economically.

Comment

Unduly Manipulative Sounds and Images

Illustrations that are informational and not misleading are permissible. As examples, a graphic rendering of the scales of justice to indicate that the advertising lawyer practices law, a picture of the lawyer, or a map of the office location are permissible illustrations.

An illustration that provides specific information that is directly related to a particular type of legal claim is permissible. For example, a photograph of an actual medication to illustrate that the medication has been linked to adverse side effects is permissible. An x-ray of a lung that has been damaged by asbestos would also be permissible. A picture or video that illustrates the nature of a particular claim or practice, such as a person on crutches or in jail, is permissible.

An illustration or photograph of a car that has been in an accident would be permissible to indicate that the lawyer handles car accident cases. Similarly, an illustration or photograph of a construction site would be permissible to show either that the lawyer handles construction law matters or workers' compensation matters. An illustration or photograph of a house with a foreclosure sale sign is permissible to indicate that the lawyer handles foreclosure matters. An illustration or photograph of a person with a stack of bills to indicate that the lawyer handles bankruptcy is also permissible. An illustration or photograph of a person being arrested, a person in jail, or an accurate rendering of a traffic stop also is permissible. An illustration, photograph, or portrayal of a bulldozer to indicate that the lawyer handles eminent domain matters is permissible. Illustrations, photographs, or scenes of doctors examining x-rays are permissible to show that a lawyer handles medical malpractice or medical products liability cases. An image, dramatization, or sound of a car accident actually occurring would also be permissible, as long as it is not unduly manipulative.

Although some illustrations are permissible, an advertisement that contains an image, sound or dramatization that is unduly manipulative is not. For example, a dramatization or illustration of a car accident occurring in which graphic injuries are displayed is not permissible. A depiction of a child being taken from a crying mother is not permissible because it seeks to evoke an emotional response and is unrelated to conveying useful information to the prospective client regarding hiring a lawyer. Likewise, a dramatization of an insurance adjuster persuading an accident victim to sign a settlement is unduly manipulative, because it is likely to convince a viewer to hire the advertiser solely on the basis of the manipulative advertisement.

Some illustrations are used to seek attention so that viewers will receive the advertiser's message. So long as those illustrations, images, or dramatizations are not unduly manipulative, they are permissible, even if they do not directly relate to the selection of a particular lawyer.

Use of Celebrities

A lawyer or law firm advertisement may not contain the voice or image of a celebrity. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to

record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, and a designation such as “attorney” or “law firm”;

(2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;

(3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;

(4) military service, including branch and dates of service;

(5) foreign language ability;

(6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (a)(4) of rule 4-7.14 regarding use of terms such as certified, specialist, and expert;

(7) prepaid or group legal service plans in which the lawyer participates;

(8) acceptance of credit cards;

(9) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (a)(5) of rule 4-7.14 regarding cost disclosures and honoring advertised fees;

(10) common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;

(11) punctuation marks and common typographical marks;

(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. The Florida Bar's lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

Comment

The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended March 8, 2018, effective April 30, 2018 (SC16-1470).

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION

(a) Payment by Other Lawyers. No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) Payment for Referrals. A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) Payment by Nonlawyers. A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment

Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended March 8, 2018, effective April 30, 2018 (SC16-1470).

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the

communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement."

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked “SAMPLE” in red ink in a type size one size larger than the largest type used in the contract and the words “DO NOT SIGN” must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: “If you have already retained a lawyer for this matter, please disregard this letter.”

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer’s knowledge regarding the recipient’s particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client’s legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client’s request.

Comment

Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer’s capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer’s professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information

transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended November 9, 2017, effective February 1, 2018.

RULE 4-7.19 EVALUATION OF ADVERTISEMENTS

(a) Filing Requirements. Subject to the exemptions stated in rule 4-7.20, any lawyer who advertises services shall file with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements filed with it pursuant to this rule for compliance with the applicable provisions set forth in rules 4-7.11 through 4-7.15 and 4-7.18(b)(2). If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

(c) Preliminary Opinions. A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement prior to production of the advertisement by submitting to The Florida Bar a draft or script that includes all spoken or printed words appearing in the advertisement, a description of any visual images to be used in the advertisement, and the fee specified in this rule. The voluntary prior submission does not satisfy the filing and evaluation requirements of these rules, but once completed, The Florida Bar will not charge an additional fee for evaluation of the completed advertisement.

(d) Opinions on Exempt Advertisements. A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in subdivision (h) of this rule to The Florida Bar, except that a lawyer may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

(e) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules 4-7.11 through 4-7.15 and 4-7.18(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(f) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer

may be subject to discipline for continuing to disseminate the advertisement. A lawyer will be subject to discipline as provided in these rules for:

- (1) failure to timely file the advertisement with The Florida Bar;
- (2) dissemination of a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;
- (3) filing of an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;
- (4) dissemination of an advertisement for which the lawyer has a finding of compliance by The Florida Bar more than 30 days after the lawyer has been notified that The Florida Bar has determined that the advertisement does not comply with this subchapter; or
- (5) dissemination of portions of a lawyer's Internet website(s) that are not in compliance with rules 4-7.14 and 4-7.15 only after 15 days have elapsed since the date of The Florida Bar's notice of noncompliance sent to the lawyer's official bar address.

(g) Notice of Noncompliance. If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(h) Contents of Filing. A filing with The Florida Bar as required or permitted by subdivision (a) must include:

- (1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);
- (2) a transcript, if the advertisement is in electronic format;
- (3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;
- (4) an accurate English translation of any portion of the advertisement that is in a language other than English;
- (5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;
- (6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;
- (7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(i) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100.

(j) Maintaining Copies of Advertisements. A copy or recording of an advertisement must be submitted to The Florida Bar in accordance with the requirements of this rule, and the lawyer must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

All advertisements must be filed for review pursuant to this rule, unless the advertisement is exempt from filing under rule 4-7.20. Even where an advertisement is exempt from filing under rule 4-7.20, a lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion prior to disseminating the advertisement. A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. Subdivision (d) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is false or misleading.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

The following are exempt from the filing requirements of rule 4-7.19:

(a) an advertisement in any of the public media that contains no illustrations and no information other than that set forth in rule 4-7.16;

(b) a brief announcement that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than the permissible content of advertisements listed in rule 4-7.16, and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement, the following criteria may be considered:

(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;

(2) whether the announcement concerns a legal subject;

(3) whether the announcement contains legal advice; and

(4) whether the lawyer or law firm paid to have the announcement published;

(c) a listing or entry in a law list or bar publication;

(d) a communication mailed only to existing clients, former clients, or other lawyers;

(e) a written or recorded communication requested by a prospective client;

(f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients; and

(g) information contained on the lawyer's Internet website(s).

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

(a) **False, Misleading, or Deceptive Firm Names.** A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) **Trade Names.** A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) **Advertising Under Trade Names.** A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by

subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment

Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. *See Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327).

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

- (1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;
- (2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;
- (3) publishing in any media a listing of lawyers or law firms together in one place; or
- (4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d) When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the

success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's

informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

Adopted January 31, 2013, effective May 1, 2013 (SC11-1327), amended March 8, 2018, effective April 30, 2018 (SC16-1470).

4-8. MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact;
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 4-1.6; or
- (c) commit an act that adversely reflects on the applicant's fitness to practice law. An applicant who commits such an act before admission, but which is discovered after admission, shall be subject to discipline under these rules.

Comment

The duty imposed by this rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted and in any event may be relevant in a subsequent admission application. The duty imposed by this rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Subdivision (b) of this rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This rule is subject to the provisions of the fifth amendment of the United States Constitution and the corresponding provisions of the Florida Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including rule 4-1.6 and, in some cases, rule 4-3.3.

An applicant for admission may commit acts that adversely reflect on the applicant's fitness to practice law and which are discovered only after the applicant becomes a member of the bar. This rule provides a means to address such misconduct in the absence of such a provision in the Rules of the Supreme Court Relating to Admissions to the Bar.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended - on December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206) (2005 WL 2456201), (916 So.2d 655); Comment amended March 23, 2006, effective May 22, 2006 (SC04-2246).

RULE 4-8.2 JUDICIAL AND LEGAL OFFICIALS

(a) Impugning Qualifications and Integrity of Judges or Other Officers. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

(b) Candidates for Judicial Office; Code of Judicial Conduct Applies. A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Florida's Code of Judicial Conduct.

Comment

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

False statements or statements made with reckless disregard for truth or falsity concerning potential jurors, jurors serving in pending cases, or jurors who served in concluded cases undermine the impartiality of future jurors who may fear to execute their duty if their decisions are ridiculed. Lawyers may not make false statements or any statement made with the intent to ridicule or harass jurors.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Amended and effective June 8, 1989 (544 So.2d 193); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects must inform the appropriate professional authority.

(b) Reporting Misconduct of Judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office must inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information:

(1) otherwise protected by rule 4-1.6;

(2) gained by a lawyer while serving as a mediator or mediation participant if the information is privileged or confidential under applicable law; or

(3) gained by a lawyer or judge while participating in an approved lawyers assistance program unless the lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction, in which case a report about the lawyer who is participating as part of a disciplinary sanction must be made to the appropriate disciplinary agency.

(d) Limited Exception for Florida Bar Established Law Practice Management Program. A lawyer employed by or acting on behalf of the law practice management advice and education program established and supervised by the board of governors is exempt from the obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer's fitness to practice, if the lawyer employed by or acting on behalf of the program acquired the knowledge while engaged in the course of the lawyer's regular job duties as an employee of the program.

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4-1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term

“substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Generally, Florida statutes provide that information gained through a “mediation communication” is privileged and confidential, including information which discloses professional misconduct occurring outside the mediation. However, professional misconduct occurring during the mediation is not privileged or confidential under Florida statutes.

Information about a lawyer’s or judge’s misconduct or fitness may be received by a lawyer in the course of that lawyer’s participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); effective Feb. 8, 2001 (795 So.2d 1); amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417). Amended April 12, 2012, effective July 1, 2012 (SC10-1967), amended November 9, 2017, effective February 1, 2018 (SC16-1962); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on

any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made:

(1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;

(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;

(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);

(4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and

(5) as provided in the Florida Rules of Appellate Procedure or order of the Supreme Court of Florida for matters pending action by that court.

Except as stated otherwise herein or in the applicable rules, all times for response shall be calculated as provided elsewhere in these Rules Regulating The Florida Bar and may be extended or shortened by bar counsel or the disciplinary agency making the official inquiry upon good cause shown.

Failure to respond to an official inquiry with no good cause shown may be a matter of contempt and processed in accordance with rule 3-7.11(f) of these Rules Regulating The Florida Bar.

(h) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation; or

(i) engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship.

If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance

of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship.

The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.

Comment

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take, provided that the client is not used to indirectly violate the Rules of Professional Conduct.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of rule 4-1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

Subdivision (c) recognizes instances where lawyers in criminal law enforcement agencies or regulatory agencies advise others about or supervise others in undercover investigations, and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these agencies. Although the exception appears in this rule, it is also applicable to rules 4-4.1 and 4-4.3. However, nothing in the rule allows the lawyer to engage in such conduct if otherwise prohibited by law or rule.

Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such conduct, when directed towards litigants, jurors, witnesses, court personnel, or

other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, physical characteristic, or any other basis, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. This subdivision does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, or agent and officer, director, or manager of a corporation or other organization.

A lawyer's obligation to respond to an inquiry by a disciplinary agency is stated in subdivision (g) of this rule and subdivision (h)(2) of rule 3-7.6. While response is mandatory, the lawyer may deny the charges or assert any available privilege or immunity or interpose any disability that prevents disclosure of a certain matter. A response containing a proper invocation thereof is sufficient under the Rules Regulating The Florida Bar. This obligation is necessary to ensure the proper and efficient operation of the disciplinary system.

Subdivision (h) of this rule was added to make consistent the treatment of attorneys who fail to pay child support with the treatment of other professionals who fail to pay child support, in accordance with the provisions of section 61.13015, Florida Statutes. That section provides for the suspension or denial of a professional license due to delinquent child support payments after all other available remedies for the collection of child support have been exhausted. Likewise, subdivision (h) of this rule should not be used as the primary means for collecting child support, but should be used only after all other available remedies for the collection of child support have been exhausted. Before a grievance may be filed or a grievance procedure initiated under this subdivision, the court that entered the child support order must first make a finding of willful refusal to pay. The child support obligation at issue under this rule includes both domestic (Florida) and out-of-state (URES) child support obligations, as well as arrearages.

Subdivision (i) proscribes exploitation of the client or the lawyer-client relationship by means of commencement of sexual conduct. The lawyer-client relationship is grounded on mutual trust. A sexual relationship that exploits that trust compromises the lawyer-client relationship. Attorneys have a duty to exercise independent professional judgment on behalf of clients. Engaging in sexual relationships with clients has the capacity to impair the exercise of that judgment.

Sexual conduct between a lawyer and client violates this rule, regardless of when the sexual conduct began when compared to the commencement of the lawyer-client relationship, if the sexual conduct exploits the lawyer-client relationship, negatively affects the client's interest, creates a conflict of interest between the lawyer and client, or negatively affects the exercise of the lawyer's independent professional judgment in representing the client.

Subdivision (i) creates a presumption that sexual conduct between a lawyer and client exploits or adversely affects the interests of the client or the lawyer-client relationship if the

sexual conduct is entered into after the lawyer-client relationship begins. A lawyer charged with a violation of this rule may rebut this presumption by a preponderance of the evidence that the sexual conduct did not exploit the lawyer-client relationship, negatively affect the client's interest, create a conflict of interest between the lawyer and client, or negatively affect the exercise of the lawyer's independent professional judgment in representing the client.

For purposes of this rule, a "representative of a client" is an agent of the client who supervises, directs, or regularly consults with the organization's lawyer concerning a client matter or has authority to obligate the organization with respect to the matter, or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 1, 1993, effective Jan. 1, 1994 (624 So.2d 720); Feb. 9, 1995 (649 So.2d 868); July 20, 1995 (658 So.2d 930); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (SC03-705), 875 So.2d 448); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206) (2005 WL 2456201), (916 So.2d 655); Amended March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); Amended November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 4-8.5 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction. See rule 4-5.5.

If the Rules of Professional Conduct in the 2 jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than 1 jurisdiction.

Where the lawyer is licensed to practice law in 2 jurisdictions that impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

Comment amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES

(a) Authorized Business Entities. Lawyers may practice law in the form of professional service corporations, professional limited liability companies, sole proprietorships, general partnerships, or limited liability partnerships organized or qualified under applicable law. Such forms of practice are authorized business entities under these rules.

(b) Practice of Law Limited to Members of The Florida Bar. No authorized business entity may engage in the practice of law in the state of Florida or render advice under or interpretations of Florida law except through officers, directors, partners, managers, agents, or employees who are qualified to render legal services in this state.

(c) Qualifications of Managers, Directors and Officers. No person may serve as a partner, manager, director or executive officer of an authorized business entity that is engaged in the practice of law in Florida unless such person is legally qualified to render legal services in this state. For purposes of this rule the term “executive officer” includes the president, vice-president, or any other officer who performs a policy-making function.

(d) Violation of Statute or Rule. A lawyer who, while acting as a shareholder, member, officer, director, partner, proprietor, manager, agent, or employee of an authorized business entity and engaged in the practice of law in Florida, violates or sanctions the violation of the authorized business entity statutes or the Rules Regulating The Florida Bar will be subject to disciplinary action.

(e) Disqualification of Shareholder, Member, Proprietor, or Partner; Severance of Financial Interests. Whenever a shareholder of a professional service corporation, a member of a professional limited liability company, proprietor, or partner in a limited liability partnership becomes legally disqualified to render legal services in this state, said shareholder, member, proprietor, or partner must sever all employment with and financial interests in such authorized business entity immediately. For purposes of this rule the term “legally disqualified” does not include suspension from the practice of law for a period of time less than 91 days. Severance of employment and financial interests required by this rule will not preclude the shareholder, member, proprietor, or partner from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder, member, proprietor, or partner was legally qualified to render legal services in this state. This provision will not prohibit employment of a legally disqualified shareholder, member, proprietor, or partner in a position that does not render legal service nor payment to an existing profit sharing or pension plan to the extent permitted in rules 3-6.1 and 4-5.4(a)(3), or as required by applicable law.

(f) Cessation of Legal Services. Whenever all shareholders of a professional service corporation, or all members of a professional limited liability company, the proprietor of a solo practice, or all partners in a limited liability partnership become legally disqualified to render legal services in this state, the authorized business entity must cease the rendition of legal services in Florida.

(g) Application of Statutory Provisions. Unless otherwise provided in this rule, each shareholder, member, proprietor, or partner of an authorized business entity will possess all

rights and benefits and will be subject to all duties applicable to such shareholder, member, proprietor, or partner provided by the statutes pursuant to which the authorized business entity was organized or qualified.

Comment

In 1961 this court recognized the authority of the legislature to enact statutory provisions creating corporations, particularly professional service corporations. But this court also noted that “[e]nabling action by this Court is therefore an essential condition precedent to authorize members of The Florida Bar to qualify under and engage in the practice of their profession pursuant to The 1961 Act.” *In Re The Florida Bar*, 133 So. 2d 554, at 555 (Fla. 1961).

The same is true today, whatever the form of business entity created by legislative enactment. Hence, this rule is adopted to continue authorization for members of the bar to practice law in the form of a professional service corporation, a professional limited liability company, or a limited liability partnership. This rule also permits a member of the bar to practice law as a sole proprietor or as a member of a general partnership. These types of entities are collectively referred to as authorized business entities.

Limitation on rendering legal services

No person may render legal services on behalf of an authorized business entity unless that person is otherwise authorized to do so via membership in the bar or through a motion for leave to appear. Neither the adoption of this rule nor the statutory provisions alter this limitation.

Employment by and financial interests in an authorized business entity

This rule and the statute require termination of employment of a shareholder, member, proprietor, or partner when same is “legally disqualified” to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder, member, proprietor, or partner cannot render the same type of services. Continued engagement in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with nonlawyers and this rule continues the application of that type of prohibition. However, nothing in this rule or the statute prohibits payment to the disqualified shareholder, member, proprietor, or partner for legal services rendered while the shareholder, member, proprietor, or partner was qualified to render same, even though payment for the legal services is not received until the shareholder, member, proprietor, or partner is legally disqualified.

Similarly, this rule and the statute require the severance of “financial interests” of a legally disqualified shareholder, member, proprietor, or partner. The same reasons apply to severance of financial interests as those that apply to severance of employment. Other provisions of these rules proscribe limits on employment and the types of duties that a legally disqualified shareholder, member, proprietor, or partner may be assigned.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services.

Hence, any suspension of less than 91 days, including membership fees delinquency suspensions, is excluded from the definition of the term. These temporary impediments to the practice of law are such that with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services. Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

However, the exclusion of such suspensions from the definition of the term does not authorize the payment to the disqualified shareholder, member, proprietor, or partner of compensation based on fees for legal services rendered during the time when the shareholder, member, proprietor, or partner is not personally qualified to render such services. Continuing the employment of a legally disqualified shareholder, member, proprietor, or partner during the term of a suspension of less than 91 days requires the authorized business entity to take steps to avoid the practice of law by the legally disqualified shareholder, member, proprietor, or partner, the ability of the legally disqualified shareholder, member, proprietor, or partner to control the actions of members of the bar qualified to render legal services, and payment of compensation to the legally disqualified shareholder, member, proprietor, or partner based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner is not qualified to render them. Mere characterization of continued compensation, which is the same or similar to that the legally disqualified shareholder, member, proprietor, or partner received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

Profit sharing or pension plans

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statute may abridge such payments. However, if permitted under applicable law the amount paid to the plan for a legally disqualified shareholder, member, proprietor, or partner will not include payments based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner was not qualified to render legal services.

Interstate practice

This rule permits members of The Florida Bar to engage in the practice of law with lawyers licensed to practice elsewhere in an authorized business entity organized under the laws of another jurisdiction and qualified under the laws of Florida (or vice-versa), but nothing in this rule is intended to affect the ability of non-members of The Florida Bar to practice law in Florida. See, e.g., *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978).

The terms qualified and legally disqualified are imported from the Professional Service Corporation Act (Chapter 621, Florida Statutes).

Added June 8, 1989 (544 So.2d 193); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 20, 2004 (SC03-705); corrected opinion issued July 7, 2004 (875 So.2d 448); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206), (916 So.2d 655); amended May 29, 2014; effective June 1, 2014 (SC12-2234).

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS

5-1. GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) *Trust Account Required; Location of Trust Account; Commingling Prohibited.* A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except:

(A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and

(B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

(2) *Compliance with Client Directives.* Trust funds may be separately held and maintained other than in a bank, credit union, or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) *Safe Deposit Boxes.* If a lawyer uses a safe deposit box to store trust funds or property, the lawyer must advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand is conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property on which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or

fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. On receiving funds or other property in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, on request by the client or third person, must promptly render a full accounting regarding the property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property must be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm must be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Foundation” means The Florida Bar Foundation, Inc..

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) “Eligible institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement

must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

- (A) amount of a client’s or third person’s funds to be held by the lawyer or law firm;
- (B) period of time the funds are expected to be held;
- (C) likelihood of delay in the relevant transaction(s) or proceeding(s);
- (D) lawyer or law firm’s cost of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and
- (E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client’s or third person’s funds are nominal or short term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer’s good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar’s website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm,

practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) Remittance and Reporting Instructions. Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the foundation;

(ii) transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts.* The foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule.

However, the foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined in this subchapter may not receive benefit from any interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When a lawyer's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, the funds or property must be designated as unidentifiable or held for missing owners. The lawyer must make a diligent search and inquiry 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 must be properly identified as trust property in the lawyer's possession. If a missing beneficial owner is located, the trust funds or property must be paid over or delivered to the beneficial owner if the owner is then entitled to receive the funds or property. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners must be disposed of as provided in applicable Florida law after diligent search and inquiry fail to identify the beneficial owner or owner's address.

(j) Disbursement against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on these deposits without disclosure to and permission of affected clients. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. The lawyer may disburse uncollected funds from the trust account in reliance on the deposit when the deposit is made by a:

(1) certified check or cashier's check;

(2) check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) bank check, official check, treasurer's check, money order, or other instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(4) check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(5) check issued by the United States, the state of Florida, or any agency or political subdivision of the state of Florida;

(6) check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, on obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, the lawyer will not be guilty of professional misconduct if the lawyer accepting any check that is later dishonored personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients.

(k) Overdraft Protection Prohibited. A lawyer must not authorize overdraft protection for any account that contains trust funds.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed.

However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds must be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect these third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. *See Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.*, 982 So. 2d 628 (Fla. 2008). Under certain circumstances lawyers may have a legal duty to protect funds in the lawyer's trust account that have been assigned to doctors, hospitals, or other health care providers directly or designated as Medpay by an insurer. *See The Florida Bar v. Silver*, 788 So. 2d 958 (Fla. 2001); *The Florida Bar v. Krasnove*, 697 So. 2d 1208 (Fla. 1997); *The Florida Bar v. Neely*, 587 So. 2d 465 (Fla. 1991); Florida Ethics Opinion 02-4.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule. However, where a lawyer is an escrow agent and represents a party to a transaction involving the escrowed funds, the Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties having an interest in escrowed funds whether the funds are in a lawyer's trust account or a separate escrow account. *The Florida Bar v. Golden*, 566 So. 2d 1286 (Fla. 1990); *See also The Florida Bar v. Hines*, 39 So. 3d 1196 (Fla. 2010); *The Florida Bar v. Marrero*, 157 So. 3d 1020 (Fla. 2015).

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand must be a conversion. This does not preclude the retention of money or other property on which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in

trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer on receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

Amended July 20, 1989, effective Oct. 1, 1989 (547 So.2d 117); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); July 20, 1995 (658 So.2d 930); April 24, 1997 (692 So.2d 181); June 14, 2001, effective July 14, 2001 (797 So.2d 551); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705) (875 So.2d 448); March 23, 2006, effective May 22, 2006 (SC04-2246), (933 So.2d 417); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); amended July 7, 2011, effective October 1, 2011 (SC10-1968). Amended June 11, 2015, effective October 1, 2015 (SC14-2088), amended November 9, 2017, effective February 1, 2018.

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and where this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules apply to matters in which a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) Minimum Trust Accounting Records. Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that must be maintained:

(1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account";

(2) original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received;

(3) original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively

(B) include all endorsements and all other data and tracking information, and

(C) clearly identify the client or case by number or name in the memo area of the check;

(4) other documentary support for all disbursements and transfers from the trust account including records of all electronic transfers from client trust accounts, including:

(A) the name of the person authorizing the transfer;

(B) the name of the recipient;

(C) confirmation from the banking institution confirming the number of the trust account from which money is withdrawn; and

(D) the date and time the transfer was completed;

(5) original or clearly legible digital copies of all records regarding all wire transfers into or out of the trust account, which at a minimum must include the receiving and sending financial institutions' ABA routing numbers and names, and the receiving and sending account holder's name, address and account number. If the receiving financial institution processes through a correspondent or intermediary bank, then the records must include the ABA routing number and name for the intermediary bank. The wire transfer information must also include the name of the client or matter for which the funds were transferred or received, and the purpose of the wire transfer, (e.g., "payment on invoice 1234" or "John Doe closing").

(6) a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred;

(7) a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

(A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred;
and

(8) all bank or savings and loan association statements for all trust accounts.

(c) Responsibility of Lawyers for Firm Trust Accounts and Reporting.

(1) Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm's trust account(s), which plan must be disseminated to each lawyer in the firm. The written plan must include the name(s) of the signatories for the law firm's trust accounts, the name(s) of the lawyer(s) who are responsible for reconciliation of the law firm's trust account(s) monthly and annually and the name(s) of the lawyer(s) who are responsible for answering any questions that lawyers in the firm may have about the firm's trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the trust account signatories and/or lawyer(s) responsible for reconciliation of the firm's trust account(s).

(2) Every lawyer is responsible for that lawyer's own actions regarding trust account funds subject to the requirements of chapter 4 of these rules. Any lawyer who has actual knowledge that the firm's trust account(s) or trust accounting procedures are not in compliance with chapter 5 may report the noncompliance to the managing partner or shareholder of the lawyer's firm. If the noncompliance is not corrected within a reasonable time, the lawyer must report the noncompliance to staff counsel for the bar if required to do so pursuant to the reporting requirements of chapter 4.

(d) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer is required to make monthly:

(A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal;
and

(B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons for these differences.

(2) The lawyer is required to prepare an annual detailed list identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listings must be retained for at least 6 years.

(4) The lawyer or law firm must authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer must file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors. If the lawyer fails to file the trust accounting certificate, the lawyer will be deemed a delinquent member and ineligible to practice law.

(e) Electronic Wire Transfers. Authorized electronic transfers from a lawyer or law firm's trust account are limited to:

(1) money required to be paid to a client or third party on behalf of a client;

(2) expenses properly incurred on behalf of a client, such as filing fees or payment to third parties for services rendered in connection with the representation;

(3) money transferred to the lawyer for fees which are earned in connection with the representation and which are not in dispute; or

(4) money transferred from one trust account to another trust account.

(f) Record Retention. A lawyer or law firm that receives and disburses client or third-party funds or property must maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.

(1) On dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance and retention of client trust account records specified in this rule.

(2) On the sale of a law practice, the seller must make reasonable arrangements for the maintenance and retention of trust account records specified in this rule consistent with other requirements regarding the sale of a law firm set forth in Chapter 4 of these rules.

(g) Audits. Any of the following are cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by this rule;
- (2) report of trust account violations or errors to staff counsel under this rule;
- (3) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (4) filing of a petition for creditor relief on behalf of a lawyer;
- (5) filing of felony charges against a lawyer;
- (6) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;
- (7) filing of a claim against a lawyer with the Clients' Security Fund;
- (8) request by the chair or vice chair of a grievance committee or the board of governors;
- (9) on court order; or
- (10) on entry of an order of disbarment, on consent or otherwise.

(h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule will be at the cost of the lawyer audited only when the audit reveals that the lawyer was not in substantial compliance with the trust accounting requirements. It will be the obligation of any lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited in them. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

(i) Failure to Comply With Subpoena for Trust Accounting Records. Failure of a member to timely produce trust accounting records will be considered as a matter of contempt and process in the manner provided in subdivision (d) and (f) of rule 3-7.11, Rules Regulating The Florida Bar.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); July 3, 2003 (850 So.2d 499); May 20, 2004 (SC03-705) (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088), amended November 9, 2017, effective February 1, 2018.

CHAPTER 6. LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

6-1. GENERALLY

RULE 6-1.1 COMPOSITION OF BOARD

The board of legal specialization and education shall be composed of 16 members of The Florida Bar appointed by the president of The Florida Bar, with the advice and consent of the board of governors. Fifteen of the members shall hold office for 3 years and until their successors are appointed. These 15 members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: 5 members shall serve until June 30 next following their appointment, 5 members shall serve until the second June 30 following their appointment, and 5 members shall serve until the third June 30 following their appointment. One of the members shall be designated by the president as chair. In addition, 1 member shall also be the chair of the continuing legal education committee of The Florida Bar, although no person may be chair of both the board of legal specialization and education and continuing legal education committee of The Florida Bar. Any vacancy shall be filled in the manner provided for original appointments.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272).

RULE 6-1.2 PUBLIC NOTICE

The Florida Bar may publish a public notice in any media, in substantially the following form:

NOTICE

FOR THE GENERAL INFORMATION OF THE PUBLIC

LAWYERS INDICATING "BOARD CERTIFIED," OR "BOARD CERTIFIED SPECIALIST," OR "BOARD CERTIFIED EXPERT" HAVE BEEN CERTIFIED BY THE FLORIDA BAR AS HAVING SPECIAL KNOWLEDGE, SKILLS, AND PROFICIENCY IN THEIR AREAS OF PRACTICE AND HAVE BEEN EVALUATED BY THE BAR AS TO THEIR CHARACTER, ETHICS, AND REPUTATION FOR PROFESSIONALISM IN THE PRACTICE OF LAW.

ALL PERSONS ARE URGED TO MAKE THEIR OWN INDEPENDENT INVESTIGATION AND EVALUATION OF ANY LAWYER BEING CONSIDERED.

This notice published by The Florida Bar Board of Legal Specialization and Education, Telephone 850/561-5600, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Sept. 24, 1998, effective Oct. 1, 1998 (718

So.2d 1179); address change, amended July 3, 2003; amended December 20, 2007, effective March 1, 2008 (SC06-736); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 6-1.3 LIABILITY

The Florida Bar shall assume no liability to any persons whomsoever by reason of the adoption and implementation of the designation or certification plans.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

RULE 6-1.4 AMENDMENT

These rules may be amended in accordance with the procedures for amending the Rules Regulating The Florida Bar as provided in rule 1-12.1.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-1.5 DISQUALIFICATION AS ATTORNEY DUE TO CONFLICT

(a) Members of the BLSE, Members of the Certification Committees, Members of the Board of Governors, and Employees of The Florida Bar. No member of the BLSE, member of a certification committee, member of the board of governors, or employee of The Florida Bar shall represent a party other than The Florida Bar in certification proceedings authorized under these rules.

(b) Former Members of the BLSE, Former Members of the Certification Committees, Former Board Members, and Former Employees. No former member of the BLSE, former member of a certification committee, former member of the board of governors, or former employee of The Florida Bar shall represent any party other than The Florida Bar in certification proceedings authorized under these rules if personally involved to any degree in the matter while a member of the BLSE, certification committee, board of governors, or while an employee of The Florida Bar.

A former member of the BLSE, former member of a certification committee, former member of the board of governors, or former employee of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the attorney seeks to be a representative, and who did not serve in a supervisory capacity over such matter, shall not represent any party except The Florida Bar for 1 year after such service without the express consent of the board.

(c) Partners, Associates, Employers, or Employees of the Firms of BLSE Members, Certification Committee Members, or Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar. Members of the firms of board of governors members, BLSE members, or certification committee members shall not represent any

party other than The Florida Bar in certification proceedings authorized under these rules without the express consent of the board.

(d) Partners, Associates, Employers, or Employees of the Firms of Former BLSE Members, Former Certification Committee Members, or Former Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar. Attorneys in the firms of former board of governors members, former BLSE members, or former certification committee members shall not represent any party other than The Florida Bar in certification proceedings authorized under these rules for 1 year after the former member's service without the express consent of the board.

Added May 20, 2004 (SC03-705), (875 So.2d 448).

6-2. FLORIDA DESIGNATION PLAN

Subchapter 6-2 Sunsetting on June 30, 1996.

6-3. FLORIDA CERTIFICATION PLAN

RULE 6-3.1 ADMINISTRATION

The board of legal specialization and education shall have the authority and responsibility to administer the program for regulation of certification including:

(a) recommending to the board of governors areas in which certificates may be granted and providing procedures by which such areas may be determined, refined, or eliminated;

(b) recommending to the board of governors minimum, reasonable, and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates in areas of certification;

(c) providing procedures for the investigation and testing of the qualifications of applicants and certificate holders;

(d) awarding certificates to qualified applicants;

(e) encouraging law schools, the continuing legal education committee of The Florida Bar, voluntary bar associations, and other continuing legal education entities to develop and maintain a program of continuing legal education to meet the standards described by the plan;

(f) cooperating with other agencies of The Florida Bar in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of certification;

(g) cooperating with the standing committee on specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization;

(h) establishing policies, procedures, and appropriate fees to evaluate and accredit lawyer certifying organizations and programs;

(i) reporting as required, but at least annually, to the board of governors on the status and conditions of the plan;

(j) determining standards, rules, and regulations to implement these rules in accordance with the minimum standards prescribed by the Supreme Court of Florida; and

(k) delegating to The Florida Bar staff any of the administrative responsibilities of the board of legal specialization and education providing said board retains responsibility for staff decisions.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); May 20, 2004 (SC03-705), (875 So.2d 448).

RULE 6-3.2 CERTIFICATION COMMITTEES

(a) Initial Certification Committees. For each certification area approved by the Supreme Court of Florida, a 9-member committee, bearing the name of the area, shall be appointed by the president of The Florida Bar, with the advice and consent of the board of governors. Initial committee appointees shall be eminent attorneys in each field, shall be members in good standing of The Florida Bar, shall have been admitted to The Florida Bar no less than 10 years, and must meet such other requirements as may in the future be promulgated by the board of legal specialization and education. Initial committee appointees shall be certified in the applicable area of practice by reason of appointment to that area's certification committee. The committee members shall hold office for 3 years and until their successors are appointed. The committee members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: 3 members shall serve until June 30 next following their appointment, 3 members shall serve until the second June 30 following their appointment, and 3 members shall serve until the third June 30 following their appointment.

(b) Subsequent Certification Committees. Subsequent certification committee appointees shall be appointed by the president-elect of The Florida Bar. must be certified in the area at the time of appointment, must be members in good standing of The Florida Bar, and must meet such other requirements as may be promulgated by the board of legal specialization and education. Upon the recommendation of the board of legal specialization and education and the approval of The Florida Bar Board of Governors, the composition of a certification committee may be adjusted to no fewer than 5 members or no more than 15 members. Committee members shall be appointed to staggered terms of office.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Feb. 8, 2001 (795 So.2d 1). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 6-3.3 JURISDICTION OF CERTIFICATION COMMITTEES

Each certification committee shall be responsible for:

(a) proposing to the board of legal specialization and education criteria for the issuance or renewal of a certificate, which may include:

- (1) experience;
- (2) references;
- (3) continuing legal education;
- (4) examination, either oral or written or both;
- (5) whether certificates may be issued without examination and on what basis; and
- (6) other relevant matters;

(b) reviewing applications for certificates;

(c) reviewing and establishing testing procedures as may be deemed necessary for certification or recertification; and

(d) recommending to the board of legal specialization and education that certificates be issued to those individuals meeting both the minimum standards imposed by this plan and the particular standards for the area for which certification is sought.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-3.4 LIMITATIONS ON THE POWERS OF THE BOARD OF GOVERNORS, THE BOARD OF LEGAL SPECIALIZATION AND EDUCATION, AND THE CERTIFICATION COMMITTEES

(a) **Limit on Right to Practice.** No standard shall be approved that shall, in any way, limit the right of a certificate holder to practice law in all areas.

(b) **Certification Not Required to Practice.** No lawyer shall be required to be certified before practicing law in any particular area.

(c) **Certification of Individuals Only.** All requirements for and all benefits to be derived from certification are individual and may not be fulfilled by or attributed to a law firm of which the certified lawyer may be a member.

(d) **Voluntary Nature of Plan.** Participation in the plan shall be on a voluntary basis.

(e) Limit on Number of Certified Areas. The limit on the number of areas in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirements of “substantial involvement” and such other standards as may be established by the board of legal specialization and education.

(f) Rules Regulating The Florida Bar. No rules or standards shall be adopted in contravention of these Rules Regulating The Florida Bar.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-3.5 STANDARDS FOR CERTIFICATION

(a) Standards for Certification. The minimum standards for certification are prescribed below. Each area of certification established under this chapter may contain higher or additional standards if approved by the Supreme Court of Florida.

(b) Eligibility for Application. A member in good standing of The Florida Bar who is currently engaged in the practice of law and who meets the area’s standards may apply for certification. From the date the application is filed to the date the certificate is issued, the applicant must continue to practice law and remain a member in good standing of The Florida Bar. The certificate issued by the board of legal specialization and education shall state that the lawyer is a “Board Certified (area of certification) Lawyer.”

(c) Minimum Requirements for Qualifying for Certification With Examination. Minimum requirements for qualifying for certification by examination are as follows:

(1) A minimum of 5 years substantially engaged in the practice of law. The “practice of law” means legal work performed primarily for purposes of rendering legal advice or representation. Service as a judge of any court of record shall be deemed to constitute the practice of law. Employment by the government of the United States, any state (including subdivisions of the state such as counties or municipalities), or the District of Columbia, and employment by a public or private corporation or other business shall be deemed to constitute the practice of law if the individual was required as a condition of employment to be a member of the bar of any state or the District of Columbia. If otherwise permitted in the particular standards for the area in which certification is sought, the practice of law in a foreign nation state, U.S. territory, or U.S. protectorate, or employment in a position that requires as a condition of employment that the employee be licensed to practice law in such foreign nation state, U.S. territory, or U.S. protectorate, shall be counted as up to, but no more than, 3 of the 5 years required for certification.

(2) A satisfactory showing of substantial involvement in the particular area for which certification is sought during 3 of the last 5 years preceding the application for certification.

(3) A satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area’s standards but in no event less than 10 certification hours per year.

(4) Passing a written and/or oral examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in the area for which certification is sought and in the various areas relating to such field. The examination shall include professional responsibility and ethics. The award of an LL.M. degree from an approved law school in the area for which certification is sought within 8 years of application may substitute as the written examination required in this subdivision if the area's standards so provide.

(5) Current certification by an approved organization in the area for which certification is sought within 5 years of filing an application may, at the option of the certification committee, substitute as partial equivalent credit, including the written examination required in subdivision (c)(4). Approval will be by the board of legal specialization and education following a positive or negative recommendation from the certification committee.

(6) Peer review shall be used to solicit information to assess competence in the specialty field, and professionalism and ethics in the practice of law. To qualify for board certification, an applicant must be recognized as having achieved a level of competence indicating special knowledge, skills, and proficiency in handling the usual matters in the specialty field. The applicant shall also be evaluated as to character, ethics, and reputation for professionalism. An applicant otherwise qualified may be denied certification on the basis of peer review. Certification may also be withheld pending the outcome of any disciplinary complaint or malpractice action.

As part of the peer review process, the board of legal specialization and education and its area committees shall review an applicant's professionalism, ethics, and disciplinary record. Such review shall include both disciplinary complaints and malpractice actions. The process may also include solicitation of public input and independent inquiry apart from written references. Peer review is mandatory for all applicants and may not be eliminated by equivalents.

(d) Minimum Requirements for Qualification Without Examination. When certification without examination is available in an area, the minimum requirements for such certification are as follows:

(1) a minimum of 20 years in the practice on a full-time basis.

(2) a satisfactory showing of competence and substantial involvement in the particular area for which certification is sought during 5 of the last 10 years, including the year immediately preceding the application for certification. Substantial involvement in the particular area of law for the 1 year immediately preceding the application may be waived for good cause shown.

(3) a satisfactory showing of such continuing legal education in a particular field of law for which certification is sought as set by that area's standards but in no event less than 15 hours per year.

(4) satisfactory peer review and professional ethics record in accordance with subdivision (c)(6); and

(5) payment of any fees required by the plan.

(e) Certification Without Examination. When certification without examination is available in an area, it may be granted only:

(1) to individuals who apply within 2 years after the date on which the particular area is approved by the Supreme Court of Florida; or

(2) as otherwise permitted in the particular standards for the area for which certification is sought.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 6-3.6 RECERTIFICATION

(a) Duration of Certification. No certificate shall last for a period longer than 5 years.

(b) Minimum Standards for Proficiency. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any certificate holder. The following minimum standards shall apply:

(1) A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted.

(2) A satisfactory showing of such continuing legal education in the area for which certification is granted but in no event less than 50 credit hours during the 5-year period of certification.

(3) Satisfactory peer review and professional ethics record in accordance with rule 6-3.5(c)(6).

(4) Any applicant for recertification who is not, at the time of application for recertification, a member in good standing of The Florida Bar or any other bar or jurisdiction in which the applicant is admitted, as a result of discipline, disbarment, suspension, or resignation in lieu thereof, shall be denied recertification. The fact of a pending disciplinary complaint or malpractice action against an applicant for recertification shall not be the sole basis to deny recertification.

(5) The payment of any fees prescribed by the plan.

(c) Failure to Meet Standards for Recertification; Lapse of Certificate. Any applicant for recertification who has either failed to meet the standards for recertification or has allowed the certificate to lapse must meet all the requirements for initial certification as set out in the area's standards.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 6-3.7 INACTIVE STATUS

(a) Purpose. Inactive status as to board certification under chapter 6, Rules Regulating The Florida Bar, is available to eligible members who apply and qualify under this rule.

(b) Applicability. Eligible members are:

(1) *Judicial Officers.* A board certified member who is appointed or elected as a judicial officer will be permitted to retain board certification in an inactive status if the member files a properly executed application and if the member is determined eligible under this rule. For purposes of this rule, the term “judicial officer” includes:

- (A) members of the United States Constitution Article III federal judiciary;
- (B) justices of the Supreme Court of Florida;
- (C) judges of the district courts of appeal;
- (D) judges of the circuit and county courts;
- (E) administrative law judges;
- (F) magistrates employed through the court system who are prohibited from practicing law;
- (G) masters employed through the court system who are prohibited from practicing law; and
- (H) any other judicial officers, as determined by the BLSE who are prohibited from practicing law.

(2) *Law Professors.* A board certified member who does not practice law or ceases to practice law for the purpose of teaching law will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member must agree not to practice law if granted inactive status under this rule. For purposes of this rule, the term “teaching” includes only accredited law school and graduate law courses.

(3) *Professional Neutrals.* A board certified member who does not practice law or ceases to practice law for the purpose of being or becoming a mediator, arbitrator or voluntary trial resolution judge will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member must agree not to practice law if granted inactive status under this rule.

(4) *Military Personnel.* A board certified member who is called to active duty will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member will be exempt from the continuing legal education required for recertification applicable to the member's practice area during the period of active military duty.

(5) *Extended Substantial Hardship Cases.* A board certified member who is not otherwise eligible under this rule, but is unable to practice law because of a unique substantial and material hardship, medical or otherwise, may be permitted to retain board certification in an inactive status if the member files an application that is approved by the BLSE. The BLSE may impose terms and conditions, waive any requirements, or extend the time within which recertification requirements must be met. The BLSE may seek the advice of the relevant area certification committee in determining whether to grant the application, what conditions should be imposed, or what waivers should be granted.

(6) *Not Currently Certified Members.* During the 2 years following the effective date of this policy, any member who voluntarily relinquished board certification before the effective date of this rule, but who is otherwise eligible for inactive status, may be granted inactive status on approval by the BLSE.

(c) Qualifications.

(1) *Compliance with Policies.* A member who is granted board certified inactive status must maintain an active membership with The Florida Bar, obtain continuing legal education credits required for recertification applicable to the member's practice area (unless otherwise exempt under the policies), and otherwise comply with the applicable rules and policies governing board certification. The member's 5-year recertification cycle will remain intact and the member must report completion of the continuing legal education credits at the end of each 5-year cycle, unless otherwise exempt under the policies.

(2) *Annual Confirmation of Inactive Status.* A member who is granted board certified inactive status must confirm continued eligibility on an annual basis on a form approved by the BLSE.

(3) *Communication.* While board certified inactive, the member must use the phrase "board certified inactive" and include the practice area as a means by which to distinguish board certification. On reactivation, the member may communicate board certification as otherwise permitted in the Rules Regulating The Florida Bar.

(4) *Annual Fee.* A member who is board certified inactive status must pay an annual fee equal to one-half of the fee required of board certified members.

(d) Revocation or Relinquishment of Board Certified Inactive Status.

(1) *Revocation for Noncompliance.* The BLSE can revoke board certified inactive status if the member fails to comply with the policies or as provided under policy 2.15. On revocation, the member cannot use the phrase "board certified inactive." Unless and until the member is reactivated to board certified status, the member cannot use the phrase "board

certified,” or any other term permitted for use by board certified lawyers in the Rules Regulating The Florida Bar. If revocation is considered, the same notice and hearing provisions set forth in BLSE policy 2.15(d) apply.

(2) *Relinquishment.* A board certified inactive member must notify the BLSE in writing within 90 days if the member no longer qualifies for, or desires to retain, inactive status. The member must cease to use the phrase board certified inactive and must immediately apply for reactivation of board certification or relinquish board certification.

(e) Reactivation to Board Certified Status and Recertification.

(1) *Reactivation Requirements.* If the member no longer qualifies for, or desires to retain, board certified inactive status, the member may apply for reactivation of board certification within 90 days. The member must demonstrate compliance with the continuing legal education requirement for the applicable practice area, unless otherwise exempt under the policies, be a member in good standing with The Florida Bar who is eligible to practice law in Florida, and otherwise comply with the applicable rules and policies governing board certification. On review that the requirements have been satisfied, board certification will be reactivated.

(2) *Reactivation Fee.* Members who apply for reactivation of board certification must pay a fee equal to one-half of the fee required to apply for recertification.

(3) *Recertification after Reactivation.* On reactivation, the member must apply for recertification by the application filing deadline consistent with the member’s 5-year certification cycle. The requirements for recertification may be prorated by the relevant area certification committee if approved by the BLSE.

Added effective Feb. 8, 2001 (795 So.2d 1); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (164 So.3d 1217), case no. SC14-2107, amended November 9, 2017, effective February 1, 2018.

RULE 6-3.8 REVOCATION OF CERTIFICATION

A certificate may be revoked by the board of legal specialization and education without hearing or advance notice for the following reasons:

- (a) **Termination of Area.** If the program for certification in an area is terminated;
- (b) **Discipline.** Disciplinary action is taken against a member pursuant to the Rules Regulating The Florida Bar;
- (c) **Criminal Action.** When a member is found guilty, regardless of whether adjudication is imposed or withheld, of any crime involving dishonesty or a felony; or
- (d) **Miscellaneous.** When it is determined, after hearing on appropriate notice, that:

(1) the certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the certification committee or the board of legal specialization and education;

(2) the certificate holder failed to abide by all rules and regulations governing the program promulgated by the board of governors or the board of legal specialization and education as amended from time to time, including any requirement or safeguard for continued proficiency;

(3) the certificate holder failed to pay any fee established by the plan;

(4) the certificate holder no longer meets the qualifications established by the plan or the board of legal specialization and education; or

(5) the certificate holder engaged in misconduct that is inconsistent with the demonstration of special knowledge, skills, proficiency, or ethical conduct and professionalism.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); December 8, 2005, the Supreme Court of Florida issued a revised version of its original October 6, 2005 opinion adopting this amendment, effective January 1, 2006 (SC05-206).

RULE 6-3.9 MANNER OF CERTIFICATION

(a) Listing Area of Certification. A member having received a certificate in an area may list the area on the member's letterhead, business cards, and office door, in the yellow pages of the telephone directory, in approved law lists, and by such other means permitted by the Rules of Professional Conduct. The listing may be made by stating one or more of the following: "Board Certified (area of certification) Lawyer;" "Specialist in (area of certification);" or use of initials "B.C.S.," to indicate Board Certified Specialist. If the initials "B.C.S." are used, the area(s) in which the member is board certified must be identified; if used in court documents or a non-advertising context, the initials may stand alone.

(b) Members of Law Firms. No law firm may list an area of certification for the firm, but membership in the firm does not impair an individual's eligibility to list areas of certification in accordance with this chapter. Except for the firm listing in the telephone directory, a law firm may show next to the names of any firm members their certification area(s).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 6-3.10 RIGHT OF APPEAL

A lawyer who is refused certification or recertification, or whose certificate is revoked by the board of legal specialization and education, or any person who is aggrieved by a ruling or

determination of that board shall have the right to appeal the ruling to the board of governors under such rules and regulations as it may prescribe. Exhaustion of this right of appeal shall be a condition precedent to judicial review by the Supreme Court of Florida. Such review shall be by petition for review in accordance with the procedures set forth in rule 9.100, Florida Rules of Appellate Procedure.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1); May 20, 2004 - amended (SC03-705).

RULE 6-3.11 FEES

(a) Application Filing Fee. This fee is for the filing and review of an individual's certification or recertification application. This fee is not refundable.

(b) Examination/Certification Fee. This fee must be paid before taking the examination for certification or before an applicant who otherwise qualifies receives a certificate. This fee is not refundable.

(c) Annual Fee. This fee is assessed against each plan participant required to file an annual audit for a particular year. Collection of the fee coincides with the distribution of annual audit forms.

(d) Recertification Extension Fee. This fee is for extending the filing date of an application for recertification. This fee is not refundable.

(e) Challenge/Petition Filing Fee. This fee must accompany the filing of a challenge of an application denial or a petition for grade review. This fee is not refundable.

(f) Appeal Filing Fee. This fee must accompany the filing of an appeal. This fee is not refundable.

(g) Course Evaluation Fee. This fee is assessed against course sponsors that seek continuing legal education credit hours required under the plan. This fee is not refundable.

(h) Individual Credit Approval Fee. This fee is assessed against applicants or plan participants to cover administrative costs of processing a credit request where a sponsor has not sought course approval under the plan.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 6-3.12 CONFIDENTIALITY

All matters including but not limited to applications, references, tests and test scores, files, reports, investigations, hearings, findings, and recommendations shall be confidential so far as

consistent with the effective administration of this plan, fairness to the applicant, and due process of law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

RULE 6-3.13 AMENDMENTS

Standards for individual areas of certification may be amended by the board of governors consistent with the notice and publication requirements set forth in rule 1-12.1.

Adopted July 1, 1993 (621 So.2d 1032). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

6-4. STANDARDS FOR BOARD CERTIFICATION IN CIVIL TRIAL LAW

RULE 6-4.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified Civil in Trial Law.” The purpose of the standards is to identify lawyers who practice civil trial law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in civil trial law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-4.2 DEFINITIONS

(a) Civil Trial Law. “Civil trial law” is the practice of law dealing with litigation of civil controversies in all areas of substantive law before Florida circuit courts or equivalent courts of other states and federal district courts. In addition to the pretrial and trial process, “civil trial law” includes evaluating, handling, and resolving civil controversies prior to the initiation of suit.

(b) Trial. A “trial” is the actual commencement of in-court or in-chambers adversarial proceedings before the trier of fact at which testimony was taken that includes at least 2 components of a trial as defined below.

(c) Lead Counsel. Service as lead counsel is defined as having conducted a minimum of 50 percent of the in-court proceedings.

(d) Jury Trial. A jury trial is a case in which the jury has been sworn and testimony has been taken prior to concluding or settling a matter.

(e) Components of a Trial. The components of a trial applicable under this rule are:

- (1) voir dire questioning;

- (2) opening statement;
- (3) direct examination;
- (4) cross examination; and
- (5) closing statement.

(f) Day in Trial. A “day in trial” is a minimum of 6 hours.

(g) Binding. “Binding” means that the parties are required to honor the court’s decision unless and until the decision is overturned pursuant to law.

(h) Practice of Law. The “practice of law” for this area is defined as set out at rule 6-3.5(c)(1).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended and effective May 20, 2016 by the Florida Bar Board of Governors.

RULE 6-4.3 MINIMUM STANDARDS

The applicant must demonstrate the following on a form approved by the committee:

(a) Substantial Involvement and Competence. The applicant must demonstrate continuous and substantial involvement and competence in civil trial law in accordance with the following standards.

(b) Minimum Period of Practice. The applicant must have practiced law for at least 5 years of which at least 50 percent was spent actively participating in civil trial law. At least 3 years of this practice must have been immediately preceding the filing of the application or, during those 3 years, the applicant may have served as a judge of a court of general jurisdiction adjudicating civil trial matters.

(c) Minimum Number of Trials. The applicant must have handled and been substantially involved in the oral presentation of at least 15 contested civil trials, each involving substantial legal or factual issues, in courts of general jurisdiction. A jury trial of 6 or more trial days may be submitted for consideration as 2 trials only if the applicant personally completed at least 3 of 5 components of trial. A jury trial of 16 or more trial days may be submitted for consideration as 3 trials only if the applicant personally completed at least 3 of 5 components of trial.

(d) Minimum Trial Requirements. Of these 15 trials:

- (1) 5 must have been jury trials;
- (2) 5 must have been conducted by the applicant as lead counsel;
- (3) 5 must have been submitted to the trier of fact on some or all of the issues; and

(4) 4 trials, including 2 jury trials and 2 trials conducted by the applicant as lead counsel, must have been tried during the 5 year period immediately preceding filing the application.

(e) Non-qualifying Proceedings. The following matters or proceedings do not qualify as trials under this rule:

(1) mortgage foreclosures tried in less than 1 day;

(2) bankruptcy;

(3) family law;

(4) criminal law;

(5) workers' compensation;

(6) mediations and arbitrations;

(7) administrative hearings under Chapter 120, Florida Statutes; and

(8) summary judgments, evidentiary hearings, preliminary injunctions, and appellate proceedings.

(f) Substitutions.

(1) If an applicant is unable to submit 15 trials, 3 substitutions may be submitted. Acceptable substitutions include:

(A) Evidentiary hearings, injunctions, or adversarial proceedings that are binding on the parties, involved the taking of testimony and submission of evidence, and lasted at least 1 trial day, provided they involved substantial legal and factual issues as determined by the civil trial certification committee; or

(B) Completion of an advanced trial advocacy seminar, approved by the civil trial certification committee, either through teaching or attendance, that includes active participation by the applicant in simulated courtroom proceedings, which may count as no more than 1 jury or non-jury trial per application.

(g) Substantial Involvement and Competence Defined. Within the 3-year period immediately preceding the filing of the application, the applicant must have substantial involvement in contested civil matters sufficient to demonstrate special competence in civil trial law. Substantial involvement and competence includes:

(1) active participation in the litigation process, including the investigation and evaluation of civil disputes;

(2) involvement in the pretrial processes such as preparation of pleadings, discovery, and motion practice;

- (3) planning and review of strategy and tactics for trial;
- (4) participation in the process of mediation and settlement; and
- (5) taking of testimony, presentation of evidence, and argument of jury or nonjury trials.

For good cause shown, the civil trial certification committee may waive 2 of the 3 years' substantial involvement for individuals who have served as judges of courts of general jurisdiction adjudicating civil trial matters. The year immediately preceding filing the application will not be waived.

(h) Peer Review. The applicant must submit the names and addresses of 6 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's special competence and substantial involvement in civil trial law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. Individuals submitted as references must be substantially involved in civil trial law and familiar with the applicant's practice. At least 1 must be a judge of a court of general jurisdiction in the state of Florida before whom the applicant has appeared as an advocate in the 2 years immediately preceding filing the application. In addition, the board of legal specialization and education and the civil trial certification committee may, send peer review forms to other lawyers and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

(i) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in civil trial law during the 3-year period immediately preceding the application date. Accreditation of educational hours is subject to policies established by the civil trial certification committee or the board of legal specialization and education.

(j) Examination. The applicant must pass an examination administered uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in civil trial law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended January 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors; amended and effective May 20, 2016 by The Florida Bar Board of Governors.

RULE 6-4.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement and Competence. The applicant must demonstrate continuous and substantial involvement and competence in the practice of law, of which 50 percent has been spent in active participation in civil trial law throughout the period since the last date of certification in accordance with the standards in this subchapter. The applicant must

describe all courtroom experience, if any, during the period since the previous certification including motion practice, summary judgment, and injunction hearings, arbitration proceedings or any other court appearances involving the presentation of evidence and argument in an adversarial environment.

(b) Minimum Number of Trials. The applicant must have handled:

(1) 2 contested civil trials in courts of general jurisdiction, of which at least 1 was a jury case conducted by the applicant as lead counsel, 1 of which may be an evidentiary hearing or preliminary injunction; or

(2) 1 jury trial as lead counsel lasting a minimum of 6 or more trial days.

(c) Non-qualifying Proceedings. Proceedings listed as non-qualifying under the minimum standards for certification under this subchapter do not qualify as trials for recertification, except as provided above.

(d) Trial Substitution. If the applicant has not participated as lead counsel in a jury trial, the applicant may substitute completion of an advanced trial advocacy seminar, either through teaching or attendance. The advanced trial advocacy seminar must be approved by the civil trial certification committee and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. No more than 1 substitution for jury or non-jury trial may be made per application. Other acceptable substitutions must comply with the standards set forth in this subchapter.

(e) Peer Review. The applicant must submit the names and addresses of 3 lawyers, 1 of whom is currently board certified in civil trial law, and 1 judge of a court of general jurisdiction before whom the applicant has appeared as an advocate within the 2 year period preceding application. Individuals submitted as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in civil trial law, as well as the applicant's character, ethics, and reputation for professionalism, since the last date of certification. The names of lawyers who currently practice in the applicant's law firm may not be submitted as references. The board of legal specialization and education and the civil trial certification committee may, at its option, send reference forms to other lawyers and judges or authorize reference forms from other lawyers and judges. Peer review received on behalf of the applicant must be sufficient to demonstrate the applicant's competence, ethics, and professionalism in civil trial law.

(f) Education. The applicant must demonstrate completion of 50 hours of approved continuing legal education since the date of the last application for certification. Accreditation of educational hours is subject to policies established by the civil trial law certification committee or the board of legal specialization and education.

(g) Waiver of Compliance.

(1) On special application, for good cause shown, the civil trial certification committee may waive compliance with the substantial involvement criteria for an applicant who has complied with all other requirements of this rule.

(2) On special application, for good cause shown, the civil trial certification committee may waive compliance with any portion of the trial education, and peer review criteria for an applicant who is an officer of any judicial system (as defined in the Code of Judicial Conduct), including an officer such as a bankruptcy judge, special master, court commissioner, or magistrate, performing judicial functions on a full-time basis during any portion of the period since the last date of certification.

(3) On special application, for good cause shown, the civil trial certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a civil trial lawyer for a period of 14 years or more.

(4) On special application, for good cause shown, the civil trial certification committee may waive compliance with the substantial involvement criteria for an applicant, otherwise qualified, who is substantially serving as a mediator, referee, master or magistrate and is actively involved in civil trial law. For purposes of this subsection only, the judicial peer review as required in this subchapter does not need to be a judge before whom the applicant has appeared as advocate within the 2 year period preceding application.

(5) On special application, for good cause shown, the civil trial certification committee may waive compliance with any portion of the trial and substantial involvement criteria for an applicant otherwise qualified who is not able to meet the requirements for recertification for health reasons.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Sept. 30-Oct. 1, 1993, by the Board of Governors of The Florida Bar; amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; amended May 16-18, 1996, by the Board of Governors of The Florida Bar; amended Jan. 9-10, 1997, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended June 3, 2005 by the Board of Governors; amended and effective May 20, 2016 by the Florida Bar Board of Governors.

6-5. STANDARDS FOR BOARD CERTIFICATION IN TAX LAW

RULE 6-5.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Tax Law.” The purpose of the standards is to identify those lawyers who practice in the area of taxation and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in tax law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-5.2 DEFINITIONS

(a) **Tax Law.** “Tax law” means legal issues involving federal, state, or local income, estate, gift, ad valorem, excise, or other taxes.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-5.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(1) The years of practice of law need not be consecutive.

(2) Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation (or such other related fields approved by the board of legal specialization and education and the tax certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement in the practice of tax law during the 3 years immediately preceding the date of application. Upon an applicant’s request and the recommendation of the tax certification committee, the board of legal specialization and education may waive the requirement that the 3 years be “immediately preceding” the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement is defined as at least 500 hours per year in the practice of law in which an applicant has had substantial and direct participation in legal matters involving significant issues of tax law. An applicant must furnish information concerning the frequency of the applicant’s work and the nature of the issues involved. For the purposes of this subdivision the “practice of law” shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on tax law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the tax certification committee but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant’s practice, not including attorneys who currently practice in

the applicant's law firm, who can attest to the applicant's reputation for involvement in the field of tax law in accordance with rule 6-3.5(c)(6), as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education or the tax certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the tax certification committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in tax law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to tax law. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;
- (3) authoring articles or books published in professional periodicals or other professional publications;
- (4) teaching courses in "tax law" at an approved law school or other graduate level program presented by a recognized professional education association;
- (5) completing such home study programs as may be approved by the board of legal specialization and education or the tax certification committee; or
- (6) such other methods as may be approved by the board of legal specialization and education and the tax certification committee.

The board of legal specialization and education or the tax certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed paragraphs. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. Every applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of tax law to justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Dec. 7-8, 1993, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar.

RULE 6-5.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the tax certification committee, of continuous and substantial involvement in the field of tax law throughout the period since the last date of certification. Demonstration of substantial involvement shall be in accordance with rule 6-5.3(b), except that the board of legal specialization and education and/or the tax certification committee may accept an affidavit from the applicant which attests to the applicant's proficiency in tax law consistent with the purpose of the substantial involvement requirement.

(b) Education. Demonstration that the applicant has completed at least 125 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified tax lawyers. If the applicant has not attained 125 hours of continuing legal education, but has attained more than 60 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) Peer Review. Completion of the reference requirements set forth in rule 6-5.3(c).

(d) Examination. If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the tax certification committee determine that the applicant may not meet the standards in tax law established under this chapter, the board of legal specialization and education and the tax certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended effective June 29, 2000, by the Board of Governors of The Florida Bar.

6-6. STANDARDS FOR BOARD CERTIFICATION IN MARITAL AND FAMILY LAW

RULE 6-6.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Marital and Family Law." The purpose of the standards is to identify those lawyers who practice marital and family law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified marital and family lawyers. The standards also contain provisions to allow judicial officers who regularly preside over marital and family law cases to achieve board certification in marital and family law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999, by the Board of Governors of The Florida Bar.; Amended December 12, 2008 by the Board of Governors, effective December 12, 2008.

RULE 6-6.2 DEFINITIONS

(a) Marital and Family Law. “Marital and family law” is the practice of law dealing with legal problems arising from the family relationship of husband and wife and parent and child, including civil controversies arising from those relationships. In addition to actual pretrial and trial process, “marital and family law” includes evaluating, handling, and resolving such controversies prior to and during the institution of suit and postjudgment proceedings. The practice of marital and family law in the state of Florida is generally unique in that decisional, statutory, and procedural laws are specific to this state.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1).

(c) Judicial Officers. “Judicial officers” shall include judges, general magistrates, special magistrates, child support hearing officers, and private triers of fact appointed by court order.

(d) Trial. A “trial” is defined as a matter submitted to and decided by the trier of fact for ultimate resolution by the court’s rendition of a judgment or order on at least 1 issue aside from the dissolution of the parties’ marriage. Further, the applicant must have, incident thereto, presided over as a judicial officer, or conducted as an advocate, at least 1 direct and 1 cross examination of at least 2 different witnesses, with the introduction into evidence of at least 1 exhibit. The applicant must have been responsible for all, or a majority of, the presentation of evidence and/or representation of the client if the matter was handled as an advocate.

(e) Substantial Involvement. “Substantial involvement” is defined as active participation in client interviewing, counseling, investigating, preparation of pleadings, participation in discovery beyond mandatory disclosure, taking of testimony, presentation of evidence, attendance at hearings, negotiations of settlement, attendance at mediation, drafting and preparation of marital settlement agreements, and argument and trial of marital and family law cases. Substantial involvement also includes active participation in the appeal of marital and family law cases.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.3 MINIMUM STANDARDS FOR LAWYER APPLICANTS

(a) Minimum Period of Practice. The applicant must have at least 5 years of the actual practice of law immediately preceding application, of which at least 50 percent has been spent in active participation in marital and family law.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement as set forth in subdivisions (1) and (2) below, in a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage. In each of these 25 cases the

applicant shall have been responsible for all or a majority of the presentation of evidence and representation of the client.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) of this rule shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(c) Peer Review.

(1) The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in the practice of marital and family law as well as the applicant's character, ethics, and reputation for professionalism. At least 3 of the lawyers shall be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law, however, they should be substantially involved in marital and family law and familiar with the applicant's practice. In addition, all lawyer references must have participated with the applicant, during the 5-year period immediately preceding the date of application, as either opposing or co-counsel in a marital and family law or juvenile dependency proceeding, involving some combination of discovery beyond mandatory disclosure, settlement negotiations, evidentiary hearings in excess of 3 hours, trials, and/or alternative dispute resolution mechanism such as collaborative law, mediation or arbitration. This requirement is to ensure meaningful comment on the applicant's most recent special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family unit affected by the applicant's representation.

(2) The applicant shall submit the names and addresses of 3 judicial officers who have presided in circuit courts in the state of Florida and before whom the applicant has appeared as an advocate in a trial or an evidentiary hearing of at least 3 hours in length for a marital and family law and/or juvenile dependency case during the 5-year period immediately preceding the date of application.

(3) The marital and family law certification committee may, at its option, send reference forms to other attorneys and judicial officers, and make such other investigation as necessary to ensure that the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in the practice of marital and family law, including the consideration of the needs of children and the family, are befitting board certification in marital and family law.

(d) Education. The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in the field of marital and family law during the 5-year period immediately preceding the date of application. At least 5 of the 75 credit hours must be in ethics, dispute resolution, collaborative law and/or mental health continuing legal education. Accreditation of educational hours is subject to policies established by the marital and family law certification committee or the board of legal specialization and education and may include such activity as:

- (1) teaching a course in marital and family law;
- (2) completion of a course in marital and family law;
- (3) participation as a panelist or speaker in a symposium or similar program in marital and family law;
- (4) attendance at a lecture series or similar program concerning marital and family law, sponsored by a qualified educational institution or bar group;
- (5) authorship of a book or article on marital and family law, published in a professional publication or journal; and
- (6) such other educational experience as the marital and family law certification committee or the board of legal specialization and education shall approve.

(e) Examination. The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, experience, and professionalism in marital and family law to justify the representation of special competence to the legal profession and the public.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.4 MINIMUM STANDARDS FOR JUDICIAL OFFICERS

An applicant who has served as a judicial officer within the 5-year period immediately preceding the date of application may be eligible for board certification if the applicant complies with each of the following standards:

(a) Minimum Period of Practice or Judicial Service. The applicant must have devoted at least 50 percent of the applicant's practice or judicial labor to marital and family law cases during the 5-year period immediately preceding the date of application.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement, as set forth in subdivisions (1) and (2) below, as a judicial officer who presided over, or who handled as an advocate, a minimum of 25 contested marital and family law cases in circuit courts during the 5-year period immediately preceding the date of application. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 7 of the 25 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the trial requirements for certification. At a minimum, in each of the 7 cases, the applicant must have presided over a contested evidentiary trial where at least 1 direct and 1 cross examination of at least 2 different witnesses was conducted and at least 1 piece of evidence was introduced as an exhibit. If the applicant handled the cases as an advocate, the applicant must have been responsible for all or a majority of the presentation of evidence and/or representation of the client. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as 1 of the 7 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 18 contested marital and family law cases sufficient to demonstrate special competence in marital and family law. Any trials in excess of the 7 trials meeting the criteria of subdivision (b)(1) shall automatically qualify as substantial involvement cases.

(3) The determination of whether the applicant has sufficiently demonstrated substantial involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(c) Peer Review. The applicant shall submit names and addresses of 6 lawyers, who are neither current nor former associates or partners of the applicant within the 5-year period immediately preceding the date of application, as references to attest to the applicant's substantial competence and active involvement in marital and family law, as well as the applicant's character, ethics, and reputation for professionalism. At least 5 of the lawyers shall be members of The Florida Bar, with their principal office located in the state of Florida. Such lawyers need not be Florida Bar board certified in marital and family law, however, they should be substantially involved in marital and family law and familiar with the applicant's judicial service. This requirement is to ensure meaningful comment on the applicant's special knowledge, skills, proficiency, character, and reputation for professionalism in marital and

family law, including the consideration of the needs of children and the family unit affected by the applicant's judicial service. Judicial references shall not be required.

(d) Education. The applicant shall comply with rule 6-6.3(d).

(e) Examination. The applicant must pass the examination required by rule 6-6.3(e).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999; December 12, 2008 by the Board of Governors of The Florida Bar.

RULE 6-6.5 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

(a) Minimum Period of Practice and/or Judicial Service. The applicant must have devoted at least 30 percent of the applicant's practice or judicial labor to marital and family law cases.

(b) Minimum Number of Cases. The applicant must demonstrate in the application trial experience and substantial involvement by handling as an advocate, or presiding over as a judicial officer, a minimum of 15 contested marital and family law cases in circuit courts. All such cases must have involved substantial legal or factual issues other than the dissolution of marriage.

(1) At least 5 of the 15 cases must have been trials as defined in rule 6-6.2(d). The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the trial requirements for recertification. An advanced trial advocacy seminar approved by the marital and family law certification committee, completed either by teaching, attendance, or a combination thereof, shall qualify as one of the 5 trials.

(2) The applicant shall have substantial involvement, as defined in rule 6-6.2(e), in at least 10 contested marital and family law cases sufficient to demonstrate special competence as a marital and family lawyer or as a judicial officer presiding over marital and family law cases. Any trials in excess of the 5 trials meeting the criteria of subdivision (a)(1) shall automatically qualify as substantial involvement cases. The skill set inherent in presiding over a marital and family law case as a judicial officer encompasses all of the special knowledge, skills, and proficiency, as well as ethics, that the marital and family law certification committee finds sufficient to meet the substantial involvement requirements for recertification.

(3) The determination of whether the applicant has sufficiently demonstrated involvement in each case submitted shall be made on a qualitative basis by the marital and family law certification committee using the information provided by the applicant. The

marital and family law certification committee reserves the right to seek additional information from the applicant as it deems necessary to make its determination that the minimum number of cases requirement has been met.

(4) On special application, for good cause shown, the marital and family law certification committee may waive compliance with rule 6-6.5(b)(1) and/or (2) for an applicant who has been continuously certified in marital and family law for a period of 14 years or more or who has demonstrated in the application an extraordinary contribution, as determined by the marital and family law certification committee after review, inquiry, and consideration thereof, to the field of marital and family law in Florida. The applicant shall be required to complete all sections of the application for recertification with the exception of schedule B-1.

(c) Education. The applicant must have completed at least 75 hours of approved continuing legal education in accordance with rule 6-6.3(d).

(d) Peer Review. The applicant must submit references and otherwise comply with rule 6-6.3(c) or 6-6.4(c). Judicial peer review is not required for judicial officers seeking recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Feb. 17, 1995, by the Board of Governors of The Florida Bar; Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; Feb. 11, 1999, by the Board of Governors of The Florida Bar.

6-7. STANDARDS FOR BOARD CERTIFICATION IN WILLS, TRUSTS, AND ESTATES LAW

RULE 6-7.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Wills, Trusts, and Estates Law.” The purpose of the standards is to identify those lawyers who practice in the area of wills, trusts, and estates and have demonstrated special knowledge, skills, and proficiency to be properly identified to the public as board certified in wills, trusts, and estates law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 1, 1993 (621 So.2d 1032). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-7.2 DEFINITIONS

(a) Wills, Trusts, and Estates. “Wills, trusts, and estates” is the practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments to effectuate estate plans; administering estates, including tax related matters, both federal and state; and probate litigation.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for any purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law. Service as a judge of any court of record shall be deemed to constitute the practice of law. Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant’s activity is spent as a teacher of wills, trusts, and estates subjects in an accredited law school.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

RULE 6-7.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), receipt of an LL.M. degree in taxation or estate planning and probate (or such other related fields approved by the board and wills, trusts, and estates certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision; provided, however, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement in the practice of law in estate planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law during the 5 years immediately preceding the date of application, including devoting not less than 40 percent of practice to estate planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, probate and trust law, estates and trust litigation, and homestead law in this state during each of the 2 years immediately preceding application. Service as a judge in the probate division of the circuit court of this state during 6 months or more of a calendar year shall satisfy a year of substantial involvement. Except for the 2 years immediately preceding application, upon an applicant’s request and the recommendation of the wills, trusts, and estates certification committee, the board of legal specialization and education may waive the requirement that the 5 years be “immediately preceding” the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Except for the 2 years immediately preceding application, receipt of an LL.M. degree in estate planning and probate (or such other degree containing substantial estate planning and probate content as approved by the board of legal specialization and education) from an approved law school may substitute for 1

year of substantial involvement. An applicant must furnish information concerning the frequency of work and the nature of the issues involved. For the purposes of this section the “practice of law” shall be as defined in rule 6-3.5(c)(1) except that it shall also include time devoted to lecturing and/or authoring books or articles on wills, trusts, and estates if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the wills, trusts, and estates certification committee, but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant’s practice, not including attorneys who currently practice in the applicant’s law firm, who can attest to the applicant’s reputation for professional competence and substantial involvement in the field of wills, trusts, and estates. The board of legal specialization and education and the wills, trusts, and estates certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the wills, trusts, and estates certification committee may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(d) Education. Every applicant must demonstrate that, during the 3-year period immediately preceding the date of the application, the applicant has met the continuing legal education requirements in wills, trusts, and estates as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 90 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to wills, trusts, and estates. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in estates and trusts, fiduciary administration, fiduciary and transfer taxation, and homestead law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the wills, trusts, and estates certification committee.

The board of legal specialization and education and the wills, trusts, and estates certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination that will be practical and comprehensive and designed to demonstrate special knowledge, skills, and proficiency in estate planning, postmortem planning, planning for incapacity, administration of estates and trusts, fiduciary and transfer taxation, substantive and procedural aspects of probate and trust law, estates and trust litigation, homestead law, joint tenancies, tenancies by the entirety, conflicts of interest, and other ethical considerations. Such examination shall justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

RULE 6-7.4 RECERTIFICATION

(a) Eligibility. Recertification must be obtained every 5 years. To be eligible for recertification, an applicant must meet the following requirements:

(1) A satisfactory showing, as determined by the board of legal specialization and education and the wills, trusts, and estates certification committee, of continuous and substantial involvement in wills, trusts, and estates law throughout the period since the last date of certification. The demonstration of substantial involvement of more than 40 percent during each year after certification or prior recertification shall be made in accordance with the standards set forth in rule 6-7.3(b).

(2) Completion of at least 125 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in continuing legal education approved by The Florida Bar pursuant to rule 6-7.3(d)(1) through (6).

(3) Submission of the names and addresses of 3 individuals who are active in wills, trusts, and estates, including but not limited to lawyers, trust officers, certified public accountants, and judges who are familiar with the applicant's practice, excluding persons who are currently employed by or practice in the applicant's law firm, who can attest to the applicant's reputation for professional competence and substantial involvement in the field of wills, trusts, and estates law during the period since the last date of certification. The board of legal specialization and education or the wills, trusts, and estates certification committee may solicit references from persons other than those whose names are submitted by the applicant in such cases as they deem appropriate. The board of legal specialization and education or the wills, trusts, and estates certification committee may also make such additional inquiries as it deems appropriate.

(b) Denial of Recertification. The board of legal specialization and education may deny recertification based upon any information received from the peer review or from any individual referenced in subdivision (a)(3), above.

(c) Examination Requirement. If, after reviewing the material submitted by an applicant for recertification and the peer review, the wills, trusts, and estates certification committee determines the applicant may not meet the standards for wills, trusts, and estates certification established under this chapter, the wills, trusts, and estates certification committee may require, as a condition of recertification, that the applicant pass the examination given by the wills, trusts, and estates certification committee to new applicants.

Amended effective Oct. 29, 1987 (515 So.2d 977); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

6-8. STANDARDS FOR BOARD CERTIFICATION IN CRIMINAL LAW

RULE 6-8.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as either “Board Certified in Criminal Trial Law” or “Board Certified in Criminal Appellate Law.” An applicant may qualify for certification under both categories provided the applicant meets the standards for each category. The purpose of the standards is to identify those lawyers who practice criminal law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in criminal trial or appellate law.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 11, 1999; August 17, 2007. by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-8.2 DEFINITIONS AND COMMITTEE

(a) Criminal Law. “Criminal law” is the practice of law dealing with the defense and prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1).

(c) Criminal Law Certification Committee. At least 2 members of the “criminal law certification committee” shall be certified in criminal appellate law. At least 5 members shall be certified criminal trial law.

(d) Trial. A “trial” shall be defined as substantially preparing a case for court, offering testimony or evidence (or cross-examination of witness[es]) in an adversarial proceeding before a trier of fact, and submission of a case to the trier of fact for determination of the ultimate fact of guilt or innocence.

A trial conducted under the Jimmy Ryce Act, section 394.911, et seq., Florida Statutes, may count toward the trial requirement for initial certification or recertification. However, no more than 60 percent of the total trial requirement for criminal trial law certification or recertification may be based on Jimmy Ryce trials.

(e) Protracted Litigation. “Protracted litigation” shall be defined as litigation that proceeds on a long-term basis involving unusual and complicated legal or factual matters, extensive discovery, court hearings or trial, and by its very nature is so time consuming it precludes the applicant from meeting the numerical requirement.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.3 CRIMINAL TRIAL; MINIMUM STANDARDS

(a) Substantial Involvement and Competence. To become certified as a criminal trial lawyer, an applicant must demonstrate substantial involvement and competence in criminal trial law. Substantial involvement and competence shall include the following:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in criminal trial law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of a court of general jurisdiction adjudicating criminal trial matters.

(2) The trial of a minimum of 25 criminal cases. Of these 25 cases, at least 20 shall have been jury trials, tried to verdict, and at least 15 shall have involved felony charges; and at least 10 shall have been conducted by the applicant as lead counsel. At least 5 of the 25 cases shall have been tried during the 5 years immediately preceding application. On good cause shown, for satisfaction in part of the 25 criminal trials, the criminal law certification committee may consider involvement in protracted litigation as defined in rule 6-8.2(e).

(3) Submission of a criminal trial court memorandum or brief prepared and filed by the applicant within the 3 year period immediately preceding application. Such document shall be substantial in nature, state facts and argue various aspects of criminal law. The quality of this memorandum or brief will be considered in determining whether an applicant is qualified for certification.

(4) Within the 3 years immediately preceding application, the applicant’s substantial involvement must be sufficient to demonstrate special competence as a criminal trial lawyer. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases. For good cause shown, the criminal law certification committee may waive 2 of the 3 years of substantial involvement for individuals who have served as judges. In no event may the year immediately preceding application be waived.

(b) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant's substantial involvement and competence in criminal trial practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal trial law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(c) Education. The applicant shall demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for criminal trial certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours is subject to policies established by the criminal law certification committee or the board of legal specialization and education.

(d) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, skills, proficiency, and experience in criminal trial law, application of constitutional principles, and rules of criminal procedure to justify the representation of special competence to the legal profession and the public.

Amended June 18, 1987, effective July 1, 1987 (508 So.2d 1236); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); amended April 14-15, 1994, by the Board of Governors of The Florida Bar; Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.4 CRIMINAL TRIAL RECERTIFICATION

During the 5-year period immediately preceding application, an applicant shall satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant shall demonstrate substantial involvement in the practice of law, of which at least 30 percent must have been spent in active participation in criminal trial law. Substantial involvement includes investigation, evaluation, pleading, discovery, taking of testimony, presentation of evidence, and argument of jury or non-jury cases.

(b) Criminal Trials. Either as an advocate or as a judge, an applicant shall have completed the trial of a minimum of 5 criminal cases. Of these 5 cases, at least 4 shall have been jury trials and at least 3 shall have involved felony charges. On good cause shown, for satisfaction in part

of the 5 criminal trials, the criminal law certification committee may consider, in its discretion, involvement in protracted litigation as defined in rule 6-8.3(a)(2)(e) or other such criteria as the committee may deem appropriate.

The proceedings that may serve as a trial for recertification purposes include, but are not limited to cases where the:

(1) result is “dismissal of charges” by the court upon a motion for judgment of acquittal at the close of the prosecution’s case or thereafter;

(2) result is a “mistrial” or “plea.” The case may be counted as a trial at the discretion of the committee provided the applicant offers sufficient information demonstrating substantial courtroom activity;

(3) case is a “violation of probation” or a proceeding involving post-conviction relief. The case may be counted as the 1 non-jury trial of the 5 trials for recertification if the applicant offers sufficient information demonstrating substantial courtroom activity;

(4) case is a “court martial” before a judge; however, discharge boards shall be considered non-jury;

(c) Education. The applicant shall demonstrate completion of at least 50 credit hours of approved continuing legal education for criminal trial law certification, in accordance with rule 6-8.3(c).

(d) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references, to attest to the applicant’s substantial involvement and competence in criminal trial practice, as well as the applicant’s character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal trial law and familiar with the applicant’s practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal trial matters within the last 2 years, or before whom the applicant has tried a criminal trial to jury verdict, to attest to the applicant’s substantial involvement and competence in criminal trial practice, as well as the applicant’s character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant’s competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(e) Waiver of Compliance. On special application, for good cause shown, the criminal law certification committee may waive compliance with the trial criteria for an applicant who has been continuously certified as a criminal trial lawyer for a period of 14 years or more, provided the applicant:

(1) satisfies the peer review and education required in subdivisions (c) and (d) of this rule; and,

(2) demonstrates substantial involvement in criminal trial law defined, for purposes of this subdivision, as active participation in the litigation process, including the investigation and evaluation of criminal charges, involvement in pretrial processes such as discovery and motion practice, and the review of strategy and tactics for trial. The applicant shall describe the extent of substantial involvement, including courtroom and trial experience, since the last date of recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.5 CRIMINAL APPELLATE; MINIMUM STANDARDS

(a) Substantial Involvement and Competence. To become certified as a criminal appellate lawyer, an applicant must demonstrate substantial involvement and competence in criminal appellate law. Substantial involvement and competence shall include:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in criminal appellate law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge. The 5 years of criminal appellate practice shall include brief writing, motion practice, oral arguments, and extraordinary writs sufficient to demonstrate special competence as a criminal appellate lawyer.

(2) The representation of at least 25 criminal appellate actions. On good cause shown, for satisfaction in part of the 25 criminal appellate actions, the criminal law certification committee may consider involvement in protracted litigation as defined in subdivision 6-8.2(e). If any of the applicant's appellate actions occurred when the applicant was a judicial clerk/staff attorney and the rules of court prevent the applicant from enumerating those appellate actions, then the applicant shall obtain, from the applicant's judge, a letter stating the number of appellate actions in which the applicant participated while employed by the judge.

(3) Submission of 1 copy of the pleadings filed in 2 recent criminal appellate proceedings:

(4) Within the 3 years immediately preceding application, the applicant's substantial involvement must be sufficient to demonstrate special competence as a criminal appellate lawyer. Substantial involvement includes brief writing, motion practice, oral arguments, and extraordinary writs. For good cause shown, the criminal law certification committee may waive 2 of the 3 years' substantial involvement for individuals who have served as judges. In no event may the year immediately preceding application be waived.

(b) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal appellate matters within the last 2 years, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(c) Education. The applicant shall demonstrate that during the 3-year-period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for criminal appellate certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours is subject to policies established by the criminal law certification committee or the board of legal specialization and education.

(d) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, skills, proficiency, and experience in criminal appellate law, application of constitutional principles, and rules of criminal and appellate procedure to justify the representation of special competence to the legal profession and the public.

Amended June 18, 1987, effective July 1, 1987 (508 So.2d 1236); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

RULE 6-8.6 CRIMINAL APPELLATE RECERTIFICATION

During the 5-year period immediately preceding application, an applicant shall satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant shall demonstrate substantial involvement in the practice of law, of which at least 30 percent must have been spent in active participation in criminal appellate law. Substantial involvement includes brief writing, motion practice, oral arguments, and extraordinary writs sufficient to demonstrate special competence as a criminal appellate lawyer.

(b) Appellate Actions. Either as an advocate or as a judge, an applicant shall have completed at least 10 criminal appellate actions. On good cause shown, for satisfaction in part of the 10 appellate actions, the criminal law certification committee may consider involvement in protracted litigation as defined in subdivision 6-8.2(e). If any of the applicant's criminal

appellate actions occurred when the applicant was a judicial clerk/staff attorney and the rules of court prevent the applicant from enumerating those appellate actions, then the applicant shall obtain, from the applicant's judge, a letter stating the number of criminal appellate actions in which the applicant participated while employed by the judge.

(c) Education. The applicant shall demonstrate completion of at least 50 credit hours of approved continuing legal education for criminal appellate law certification, in accordance with rule 6-8.5(c).

(d) Peer Review.

(1) The applicant shall submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers shall be substantially involved in criminal appellate law and familiar with the applicant's practice

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on criminal appellate matters within the last 2 years, to attest to the applicant's substantial involvement and competence in criminal appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) Peer review received on behalf of the applicant shall be sufficient to demonstrate the applicant's competence in criminal appellate law, character, ethics, and professionalism. The criminal law certification committee may, at its option, send reference forms to other attorneys and judges.

(e) Waiver of Compliance. On special application, for good cause shown, the criminal law certification committee may waive compliance with the appellate action criteria for an applicant who has been continuously certified as a criminal appellate lawyer for a period of 14 years or more, provided the applicant:

(1) satisfies the peer review and education required in subdivisions (c) and (d) of this rule; and,

(2) demonstrates substantial involvement in criminal appellate law defined, for purposes of this subdivision, as active participation in the appellate process, including the investigation and evaluation of criminal appeals, and the review of strategy and tactics for appeals. The applicant shall describe the extent of substantial involvement, including briefs written and oral arguments attended, since the last date of recertification.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Nov. 29, 1990, effective Oct. 1, 1989 (570 So.2d 1301); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 11, 1999; August 17, 2007, by the Board of Governors of The Florida Bar.

6-9. STANDARDS FOR BOARD CERTIFICATION IN REAL ESTATE LAW

RULE 6-9.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Real Estate Law.” The purpose of the standards is to identify those lawyers who practice Florida real estate law and have the special knowledge, skills, and proficiency as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in real estate law. The practice of Florida real estate law is unique to the State of Florida because of the unique history, geographic features of the state, and the evolution of its constitutional, statutory, and decisional law. Accordingly, the standards require that lawyers seeking certification demonstrate a degree of practical knowledge and experience in Florida real estate law and transactions.

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); amended January 30, 2004 by the Board of Governors; amended and effective October 16, 2015 by Board of Governors.

RULE 6-9.2 DEFINITIONS

(a) Real Estate. “Real estate” is the practice of law, regardless of jurisdiction, dealing with matters relating to ownership and rights in real property including, but not limited to, the examination of titles, real estate conveyances and other transfers, leases, sales and other transactions involving real estate, condominiums, cooperatives, property owners associations and planned developments, interval ownership, zoning and land use planning regulation, real estate development and financing, real estate litigation, and the determination of property rights.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1).

Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Nov. 21, 1997, by the Board of Governors of the Florida Bar; Amendment approved by the Board of Governors of The Florida Bar on January 30, 2004; Board of Governors approved amendment on January 30, 2004.

RULE 6-9.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years, 3 of which meet the requirements of 6-9.3(b) as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement sufficient to show special knowledge, skills, and proficiency in the practice of real estate law during the 3 years immediately preceding the date of application. Substantial involvement is defined as including devoting at least 40 percent of one’s practice to matters in which issues of real estate law are significant factors and in which the applicant had substantial and direct

participation in those real estate issues. The applicant must also demonstrate that the applicant's real estate practice includes experience and involvement with Florida real estate law and transactions. Upon an applicant's request and the recommendation of the real estate certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision, the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of real estate law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the real estate certification committee, but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 attorneys or judges, at least 3 of whom are licensed to practice law in Florida and are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in Florida real estate law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the real estate certification committee shall alternatively authorize references from persons, including non-Florida lawyers and judges and persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the real estate certification committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the 3-year period immediately preceding the date of filing an application, the applicant has accumulated 45 hours of continuing legal education approved for credit in real estate law by the board of legal specialization and education. The board of legal specialization and education or the real estate law certification committee shall establish policies applicable to this rule.

(e) Examination. The applicant must pass a written examination that is practical, objective, and designed to demonstrate special knowledge, skills, and proficiency in real estate law to justify the representation of special competence to the legal profession and the public.

Amended effective Oct. 29, 1987 (515 So.2d 977); amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended January 30, 2004 by the Board of Governors of The Florida Bar.

RULE 6-9.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. The applicant must make a satisfactory showing, as determined by the board of legal specialization and education and the real estate certification committee, of involvement in real estate law throughout the period since the last date of certification. The demonstration of substantial involvement of at least 40 percent during each

year after certification prior to recertification shall be made in accordance with the standards set forth in rule 6-9.3(b).

(b) Continuing Legal Education Requirement. The applicant must show completion of at least 75 hours of accredited continuing legal education approved for credit in real estate law by the board of legal specialization and education since the filing of the last application for certification.

(c) Reference Requirement. An applicant for recertification shall submit the names and addresses of 5 attorneys or judges, at least 3 of whom are licensed to practice law in Florida and are familiar with the applicant's practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for ability of practice and involvement in Florida real estate law as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the real estate certification committee may also make such additional inquiries as they deem appropriate.

Amended effective Oct. 29, 1987 (515 So.2d 977); amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended January 30, 2004 by the Board of Governors of The Florida Bar. Due to recent amendments to rule 6-9.3, the BLSE removed the sentence, "The maximum number of hours for those educational activities set forth in rule 6-9.3(d)(2)-(6) shall also apply for recertification." from subdivision (b) of rule 6-9.4.

6-10. CONTINUING LEGAL EDUCATION REQUIREMENT RULE

RULE 6-10.1 CONTINUING LEGAL EDUCATION REQUIREMENT

(a) Preamble. It is of primary importance to the public and to the members of The Florida Bar that lawyers continue their legal education throughout the period of their active practice of law. To accomplish that objective, each member of The Florida Bar (referred to below as "member") must meet minimum requirements for continuing legal education.

(b) Reporting Requirement. Each member except those exempt under rule 6-10.3(c) must report compliance with continuing legal education requirements in the manner set forth in the policies adopted for administration of this plan. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of rule 6-10.3. Members described in subdivisions (c)(4) through (c)(6) of rule 6-10.3 are automatically exempt from compliance and reporting of continuing legal education.

(c) Fees. The board of governors of The Florida Bar may require a reasonable fee to be paid to The Florida Bar in connection with each member's report concerning compliance with continuing legal education requirements.

(d) Rules. The board of legal specialization and education of The Florida Bar adopts policies necessary to implement continuing legal education requirements subject to the approval of the board of governors.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 6-10.2 ADMINISTRATION

(a) Board of Legal Specialization and Education. The board of legal specialization and education shall administer the continuing legal education requirements as herein provided. Any member affected by an adverse decision of the board of legal specialization and education may appeal as provided in rule 6-10.5.

(b) Delegation of Authority. The board of legal specialization and education may delegate to the staff of The Florida Bar any responsibility set forth herein, except that of granting a waiver or exemption from continuing legal education requirements.

(c) Scope of Board of Legal Specialization and Education Activities. The board of legal specialization and education shall cooperate with and answer inquiries from staff pertaining to continuing legal education requirements and make recommendations to the board of governors concerning continuing legal education requirements, including but not limited to:

- (1) approved education courses;
- (2) approved alternative education methods;
- (3) number of hours' credit to be allowed for various education efforts;
- (4) established educational standards for satisfaction and completion of approved courses;
- (5) additional areas of education and/or practice approved for credit under continuing legal education requirements;
- (6) modification or expansion of continuing legal education requirements;
- (7) adoption of additional standards or regulations pertaining to continuing legal education requirements;
- (8) amount of reporting or delinquency fees; and
- (9) general administration of continuing legal education requirements.

(d) Maintenance of Records. The Florida Bar shall maintain a record of each member's compliance with continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS

(a) Applicability. Every member, except those exempt under subdivision (c) of this rule, must comply and report compliance with the continuing legal education requirement. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of this rule. Members described in subdivisions (c)(4) through (c)(6) of this rule are automatically exempt from compliance and reporting of continuing legal education.

(b) Minimum Hourly Continuing Legal Education Requirements. Each member must complete a minimum of 33 credit hours of approved continuing legal education activity every 3 years. At least 5 of the 33 credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental illness awareness programs, with at least 1 of the 5 hours in an approved professionalism program, and at least 3 of the 33 credit hours must be in approved technology programs. If a member completes more than 33 credit hours during any reporting cycle, the excess credits cannot be carried over to the next reporting cycle.

(c) Exemptions. Eligibility for an exemption, in accordance with policies adopted under this rule, is available for:

- (1) active military service;
- (2) undue hardship;
- (3) nonresident members not delivering legal services or advice on matters or issues governed by Florida law;
- (4) members of the full-time federal judiciary who are prohibited from engaging in the private practice of law;
- (5) justices of the Supreme Court of Florida and judges of the district courts of appeal, circuit courts, and county courts, and other judicial officers and employees as designated by the Supreme Court of Florida; and,
- (6) inactive members of The Florida Bar.

(d) Course Approval. Course approval is set forth in policies adopted pursuant to this rule. Special policies will be adopted for courses sponsored by governmental agencies for employee lawyers that exempt these courses from any course approval fee and may exempt these courses from other requirements as determined by the board of legal specialization and education.

(e) Accreditation of Hours. Accreditation standards are set forth in the policies adopted under this rule. Any course presented, sponsored, or approved for credit by an organized integrated or voluntary state bar is deemed an approved course for purposes of this rule if the course meets the criteria for accreditation established by policies adopted under this rule.

(f) Full-time Government Employees. Credit hours will be given to full-time government employees for courses presented by governmental agencies. Application for credit approval may be submitted by the full-time government lawyer before or after attendance, without charge.

(g) Skills Training Preadmission. The board of legal specialization and education may approve for CLER credit a basic skills or entry level training program developed and presented by a governmental entity. Credit earned through attendance at an approved course developed and presented by a governmental entity is applicable under subdivision (b) of this rule if taken within 12 months prior to admission to The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended March 30, 1989, effective March 31, 1989 (541 So.2d 110); Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); Feb. 8, 2001 (795 So.2d 1); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a); September 29, 2016, effective January 1, 2017 (SC16-574), 200 So.3d 1225; amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 6-10.4 REPORTING REQUIREMENTS

(a) Reports Required. Each member except those exempt under rule 6-10.3(c) must file a report showing compliance or noncompliance with the continuing legal education requirement in the form prescribed by the board of legal specialization and education. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of rule 6-10.3. Members described in subdivisions (c)(4) through (c)(6) of rule 6-10.3 are automatically exempt from compliance and reporting of continuing legal education.

(b) Time for Filing. The report must be filed with The Florida Bar no later than the last day of the member's applicable reporting period as assigned by The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 6-10.5 DELINQUENCY AND APPEAL

(a) Delinquency. If a member fails to complete and report the minimum required continuing legal education hours by the end of the applicable reporting period, the member shall be deemed delinquent in accordance with rule 1-3.6, Rules Regulating The Florida Bar.

(b) Appeal to the Board of Governors. A member deemed delinquent may appeal to the Board of Governors of The Florida Bar. Appeals to the board of governors shall be governed by the policies promulgated under these rules.

(c) Appeal to the Supreme Court of Florida. A decision of the board of governors may be appealed by the affected member to the Supreme Court of Florida. Such review shall be by

petition for review in accordance with the procedures set forth in rule 9.100, Florida Rules of Appellate Procedure.

(d) Exhaustion of Remedies. A member must exhaust each of the remedies provided under these rules in the order enumerated before proceeding to the next remedy.

(e) Tolling Time for Compliance. An appeal shall toll the time a member has for showing compliance with continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 6-10.6 REINSTATEMENT

A member deemed delinquent for failure to meet the continuing legal education requirement may be reinstated in accordance with rule 1-3.7, Rules Regulating The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 15, 1990 (556 So.2d 1119); Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 6-10.7 CONFIDENTIALITY

The files, records, and proceedings of the board of legal specialization and education, related to or arising from any failure of a member to satisfy the continuing legal education requirements, are confidential and may not be disclosed, except in the furtherance of the duties of the board of legal specialization and education or on the written request of the member or as introduced in evidence or otherwise produced in proceedings under these rules, unless directed otherwise by the Supreme Court of Florida. Nothing in this rule prohibits The Florida Bar from advising that a member is not eligible to practice law for failure to meet continuing legal education requirements.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 6-10.8 DISCIPLINARY ACTION

The board of legal specialization and education may refer misrepresentation of a material fact concerning compliance with or exemption from continuing legal education requirements for disciplinary proceedings under chapter 3 or chapter 4 of the Rules Regulating The Florida Bar.

Added July 16, 1987, effective Jan. 1, 1988 (510 So.2d 585). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120).

**6-11. STANDARDS FOR BOARD CERTIFICATION IN WORKERS'
COMPENSATION LAW
RULE 6-11.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a “Board Certified in Workers’ Compensation Law.” The purpose of the standards is to identify those lawyers who practice workers’ compensation law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in workers’ compensation law.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amendment approved by the Board of Governors on August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-11.2 DEFINITIONS

(a) Workers’ Compensation. “Workers’ compensation” is the practice of law involving the analysis and litigation of problems or controversies arising out of the Florida Workers’ Compensation Law (chapter 440, Florida Statutes).

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1).

(c) Trial. “Trial” shall be defined as the process of having carried a client’s burden of going forward in either the prosecution or defense of a claim for any substantive benefit (including entitlement to an attorney’s fee). Pretrial, settlement, lump sum, and motion hearings (including motions to be relieved of costs) shall not be considered trials. Substantial participation in a rule nisi petition and hearing for the enforcement of a workers’ compensation order is a “trial” under this subsection, but no more than two such hearings may be used. Attorney fee hearings, on the sole issue of the quantum fees, cannot be considered as a contested workers’ compensation case. Cases involving a merits hearing, with a later attorney fee hearing on the question of entitlement to an attorney’s fee on the same merit issues, can count as only 1 case. Hearings and/or trials outside the jurisdiction of the Florida Office of the Judges of Compensation Claims, and appeals of these matters (including, but not limited to, federal workers’ compensation matters, Federal Longshore and Harbor Workers’ Compensation Act matters, and other circuit court actions, etc.) cannot be used to meet the trial or protracted litigation.

(d) Protracted Litigation. “Protracted litigation” shall be defined as litigation that involves unusual or complicated legal issues and extensive discovery, yet does not result in submission of the ultimate issue to the trier of fact, or substantial presentation in the appeal of workers’ compensation cases.

(e) Substantial Equivalent. “Substantial equivalent” includes preparation and publication of legal articles, or the presentation of lectures and seminars, and the trial and submission to the

trier of fact of any workers' compensation issues before any judge other than a Judge of Compensation Claims (JCC). In addition, an applicant can only substitute up to 3 workers' compensation mediations, where the applicant acted as mediator, to count as 1 "substantial equivalent." The applicant may substitute up to 3 substantial equivalents (i.e., 9 mediations acting as mediator) in this manner. What is or is not substantial a substantial equivalent and is within the sole discretion of the workers' compensation certification committee, but may not substitute for more than 5 of the required trials of workers' compensation cases.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended by Board of Governors August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar.

RULE 6-11.3 MINIMUM STANDARDS

(a) Substantial Involvement. To become certified as a workers' compensation lawyer, a lawyer must demonstrate substantial involvement in workers' compensation law. Substantial involvement shall include the following:

(1) At least 5 years of the actual practice of law of which at least 30 percent has been spent in active participation in workers' compensation law. At least 3 years of this practice shall be immediately preceding application or, during those 3 years, the applicant may have served as a judge of compensation claims adjudicating workers' compensation matters.

(2) The trial of a minimum of 25 contested workers' compensation cases. All such cases must have involved substantial legal or factual issues. In each of these 25 cases the applicant shall have been responsible for all or a majority of the presentation of evidence and representation of the client. As partial satisfaction of the requirement of 25 contested workers' compensation cases, the workers' compensation certification committee may substitute for "trials" their "substantial equivalent," appeals, or cases involving protracted litigation of contested workers' compensation cases involving substantial legal or factual issues. Successful completion of a trial advocacy seminar, approved by the committee, that includes as a part of its curriculum active participation by the applicant in simulated courtroom proceedings may substitute as 1 contested workers' compensation case. The total number of cases that may be substituted for the minimum of 25 contested cases including cases of "substantial equivalent," appeals and cases of "protracted litigation" shall not exceed a total of 10, of which the cases of "protracted litigation" and/or appeals shall not exceed a total of 5 cases, and cases of "substantial equivalent" shall not exceed a total of 5 cases.

(3) Within the 3 years immediately preceding application, the applicant shall have substantial involvement in contested workers' compensation cases sufficient to demonstrate special competence as a workers' compensation lawyer. Substantial involvement includes investigation, evaluation, pleadings, discovery, taking of testimony, presentation of evidence and argument, and trial of workers' compensation cases. Substantial involvement also includes active participation in the appeal of workers' compensation cases. For good cause

shown, the workers' compensation certification committee may waive up to 2 of the 3 years' substantial involvement for individuals who have served as judges of compensation claims adjudicating workers' compensation matters.

(b) Peer Review. The applicant shall select and submit names and addresses of 5 lawyers, not associates or partners, as references to attest to the applicant's special competence and substantial involvement in workers' compensation practice, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers themselves shall be involved in workers' compensation law and shall be familiar with the applicant's practice. No less than 1 shall be a judge of compensation claims before whom the applicant has appeared as an advocate in the trial of a workers' compensation case in the 2 years immediately preceding the application. In addition, the workers' compensation certification committee may, at its option, send reference forms to other attorneys and judges of compensation claims.

(c) Education. The applicant shall make a satisfactory showing that, within the 3 years immediately preceding application, the applicant has accumulated at least 45 hours of approved continuing legal education in the field of workers' compensation law.

(d) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in workers' compensation law to justify the representation of special competence to the legal profession and the public.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 28-29, 1994, by the Board of Governors of The Florida Bar; amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended October 21, 2011 by the Board of Governors of The Florida Bar.

RULE 6-11.4 JUDGES OF COMPENSATION CLAIMS

An applicant who is serving as a judge of compensation claims and applies for recertification while serving as a judge of compensation claims shall be deemed to have met the requirements of rule 6-11.5.

Added June 18, 1987, effective July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar.

RULE 6-11.5 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must meet the following requirements for recertification:

(a) Substantial Involvement. The applicant shall demonstrate continuous and substantial involvement in the practice of law, of which 30 percent has been spent in active participation in

workers' compensation law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-11.3(a)(3).

(b) Trial Requirement. The applicant must have completed trial of a minimum of 15 contested workers' compensation cases, or the substantial equivalent, since the filing of the last application for certification. All such cases must have involved substantial legal or factual issues. For good cause shown, as partial satisfaction for the requirement of 15 contested workers' compensation cases, the workers' compensation certification committee may substitute for "trials" their "substantial equivalent" or 5 cases involving appeals and/or protracted litigation of contested workers' compensation cases involving substantial legal or factual issues. The total number of cases that may be substituted for the minimum 15 contested cases, including cases of "substantial equivalent," appeals and cases of "protracted litigation," is a total of 10 cases, of which the total number of cases of "protracted litigation" and/or appeals, shall not exceed a total of 8 cases and cases of "substantial equivalent" shall not exceed a total of 5 cases. An attorney fee hearing, on the sole issue of the quantum fees, cannot be considered as a contested workers' compensation case. A case involving a merits hearing, with a later attorney fee hearing on the question of entitlement to an attorney's fee on the same merit issues, can count as only 1 case.

(c) Peer Review. The applicant shall submit references as set forth in rule 6-11.3(b). The references submitted must be able to attest to the applicant's special competence and substantial involvement in workers' compensation practice, as well as the applicant's character, ethics, and professionalism, throughout the period since the last date of certification.

(d) Education. The applicant shall report completion of at least 75 hours of approved continuing legal education in workers' compensation law since the filing of the last application for certification.

(e) Waiver. On special application, for good cause shown, the workers' compensation certification committee may waive compliance with the 15 contested workers' compensation cases requirement for an applicant who has been continuously certified as a workers' compensation lawyer for a period of 14 years or more.

Added June 18, 1987 effective, July 1, 1987 (508 So.2d 1236). Amended Sept. 21, 1989, effective Oct. 1, 1989 (543 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended July 28-29, 1994, by the Board of Governors of The Florida Bar; amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; amended Oct. 31-Nov. 2, 1996, by the Board of Governors of The Florida Bar; amended May 21-22, 1998, by the Board of Governors of The Florida Bar; amended _____, _____, by the Board of Governors of The Florida Bar; Amendments approved by the Board of Governors on August 22, 2003; amended October 21, 2011 by the Board of Governors of The Florida Bar.

6-12. BASIC SKILLS COURSE REQUIREMENT RULE

RULE 6-12.1 BASIC SKILLS COURSE REQUIREMENT

(a) Preamble. It is of primary importance to the public and to the members of The Florida Bar that attorneys begin their legal careers with a thorough and practical understanding of the law. To accomplish that objective, each member of The Florida Bar (hereinafter referred to as "member") shall comply with the basic skills course requirement (hereinafter BSCR) through the

completion of continuing legal education programs developed and presented by the Young Lawyers Division of The Florida Bar (hereinafter YLD). Oversight of member compliance with this rule shall be the responsibility of the board of legal specialization and education (hereinafter BLSE.)

(b) Applicability. Every member admitted to The Florida Bar after October 1, 1988 shall comply with the BSCR.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258); Feb. 8, 2001 (795 So.2d 1).

RULE 6-12.2 ADMINISTRATION

(a) Responsibility. The YLD shall be responsible for the planning, content, and presentation of programs for BSCR compliance. The YLD shall also establish minimum quality standards for the Practicing with Professionalism program, to include instruction on discipline, ethics, professionalism, and responsibility to the public. The BLSE shall oversee member compliance with BSCR and adopt policies necessary for implementation. Such policies shall be subject to approval by the board of governors.

(b) Delegation of Authority. The BLSE may delegate to the staff of The Florida Bar any responsibility set forth herein, except that of denying a waiver or exemption from BSCR.

(c) Waiver. On special application and for good cause shown, the BLSE may adjust the time for completion, may waive compliance, or accept a substitute program, for either component of BSCR.

(d) Maintenance of Records. The Florida Bar shall maintain a record of each member's compliance with BSCR.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258); Feb. 8, 2001 (795 So.2d 1).

RULE 6-12.3 REQUIREMENT

(a) Course Components. Compliance with BSCR includes:

(1) completion of a Practicing with Professionalism program sponsored by the YLD;
and

(2) completion of 3 elective, basic, substantive continuing legal education programs sponsored by the YLD.

(b) Time for Completion. BSCR must be completed as follows:

(1) the Practicing with Professionalism program must be completed no sooner than 12 months prior to or no later than 12 months following admission to The Florida Bar; and

(2) the 3 elective, basic, substantive continuing legal education programs must be completed during the member's initial 3-year continuing legal education requirement reporting cycle assigned on admission to The Florida Bar.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); Feb. 15, 1990 (556 So.2d 1119); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 8, 2001 (795 So.2d 1); May 12, 2005, effective May 12, 2005 (SC04-914); February 4, 2010, effective March 6, 2010 (SC09-1427). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 6-12.4 DEFERMENT AND EXEMPTION

(a) Deferment of Practicing with Professionalism Requirement.

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(1), if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member elects inactive membership status in The Florida Bar; or

(E) the member is a full-time government employee who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination, as long as the member continuously remains in government practice.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(1) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) attend the Practicing with Professionalism program within 12 months of deferment expiration.

(b) Deferment of Basic Level YLD Courses.

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(2) if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member is a full-time governmental employee; or

(E) the member elects inactive membership status in The Florida Bar.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration.

(c) Exemption.

(1) *Governmental Practice.* An exemption from rule 6-12.3(a)(1) shall be granted if a member who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination has already or thereafter been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years. An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years.

(2) *Foreign Practice.* An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law (non-governmental) in a foreign jurisdiction for a period of 5 years, can demonstrate completion of 30 hours of approved continuing legal education within the immediate 3-year period, and can attest that the continuing legal education completed has reasonably prepared the member for the anticipated type of practice in Florida.

Added effective Feb. 8, 2001 (795 So.2d 1); Amended May 12, 2005, Florida Supreme Court opinion (SC04-914) - effective May 12, 2005; February 4, 2010, effective March 6, 2010 (SC09-1427).

RULE 6-12.5 NONCOMPLIANCE AND SANCTIONS

(a) Notice of Noncompliance. If a member fails to comply with this rule, the member shall be deemed delinquent as provided as provided elsewhere in the Rules Regulating The Florida Bar. The BLSE shall promptly send a notice of noncompliance to such member.

(b) Appeal to the Board of Governors. A delinquent member shall have the right to appeal the determination to the board of governors under such rules and regulations as it may prescribe.

(c) Appeal to the Supreme Court of Florida. A delinquent member shall have the right to appeal the determination of the board of governors to the Supreme Court of Florida under such rules and regulations as it may prescribe.

(d) Exhaustion of Remedies. A delinquent member must exhaust each of the remedies provided under these rules in the order enumerated before proceeding to the next remedy.

(e) Tolling Time. An appeal shall toll the determination of noncompliance and resulting delinquency until such time as all appeals have been completed or the time for taking same has expired.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

HISTORICAL NOTES Former Rule 6-12.4, relating to extension and compliance, was deleted Dec. 18, 1997, effective Jan. 1, 1998, and former Rules 6-12.5, 6-12.6, 6-12.7, and 6-12.8 were renumbered as Rules 6-12.4, 6-12.5, 6-12.6, and 6-12.7, respectively.

RULE 6-12.6 REINSTATEMENT

Any member delinquent in completion of the BSCR may be reinstated by the executive director or board of governors upon a showing of compliance with the BSCR and payment of a uniform reinstatement fee, as established by the board of governors.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

RULE 6-12.7 CONFIDENTIALITY

The files and records maintained regarding appeals conducted under this rule and any hearings in connection therewith shall be confidential until such time as the appeals process has concluded. If a member is deemed delinquent pursuant to this rule, that fact shall be public information.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

RULE 6-12.8 DISCIPLINARY ACTION

The BLSE may refer a member who makes a misrepresentation of a material fact concerning the BSCR for disciplinary investigation as provided elsewhere in these Rules Regulating The Florida Bar.

Added April 21, 1988, effective Oct. 1, 1988 (524 So.2d 634). Amended Sept. 21, 1989, effective Oct. 1, 1989 (548 So.2d 1120); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Renumbered and amended Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1258). Renumbered and amended effective Feb. 8, 2001 (795 So.2d 1).

6-13. STANDARDS FOR BOARD CERTIFICATION IN APPELLATE PRACTICE

RULE 6-13.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Appellate Practice.” The purpose of the standards is to identify those lawyers who engage in appellate practice and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in appellate practice.

Adopted July 1, 1993 (621 So.2d 1032). Amended April 9, 1999; August 17, 2007, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-13.2 DEFINITIONS

(a) Appellate Practice. “Appellate practice” is the practice of law dealing with the recognition and preservation of error committed by lower tribunals, and the presentation of argument concerning the presence or absence of error to state or federal appellate courts through brief writing, writ and motion practice, and oral argument. Appellate practice includes evaluation and consultation regarding potential appellate issues or remedies in connection with proceedings in the lower tribunal prior to the initiation of the appellate process.

(b) Appellate Action. “Appellate action” means an action filed in a state court, a federal district court, a United States court of appeals, or the Supreme Court of the United States seeking review of a decision of a lower tribunal.

(1) *Timing of Appellate Actions.* Appellate actions in which the applicant filed a principal brief, response or petition as defined in Rule 6-13.2(b), (f) or (g) before the application deadline will be counted as appellate actions regardless of whether the action is settled, dismissed or proceeds to decision on the merits. If the filing date falls outside the time frame for the current filing period, the appellate action will not count towards the required total.

(2) *Supreme Court Briefs.* A brief on the merits following an acceptance of jurisdiction in the United States Supreme Court may be considered as a separate appellate action.

(3) *Consolidated Proceedings.* Appellate proceedings with different case numbers that are consolidated by the court will not be considered separate appellate actions for any purposes for which they have been consolidated.

(4) *Cross-Appeals.* For good cause shown, the committee may determine that a cross-appeal constitutes a separate action from a direct appeal so that an appeal and cross-appeal will count as two “appellate actions” for purposes of this subchapter, if the committee

determines that the applicant had sole or primary responsibility for the filing of two separate principal briefs.

(c) Practice of Law. The “practice of law” for this area is defined in rule 6-3.5(c)(1).

(d) Appellate Practice Certification Committee. The appellate practice certification committee may include 1 member presently serving as an appellate court judge from a Florida district court of appeal, the Supreme Court of Florida, a United States court of appeals, or the Supreme Court of the United States. Certification in appellate practice is preferred, but is not a requirement. Appointment otherwise will be consistent with rule 6-3.2.

(e) Primary Responsibility. Having “primary responsibility” for writing and filing a brief, petition, or response means having the most substantial and direct participation of all the lawyers contributing to that task. Only 1 lawyer may claim primary responsibility for that task. Where primary responsibility is used to meet the requirement, the applicant must specifically identify any other lawyer who provided substantial assistance with the task and demonstrate that the applicant’s level of participation was primary to the satisfaction of the appellate practice certification committee. For the purposes of meeting the primary responsibility brief writing requirements under this subchapter, credit for a brief, petition, or response that does not designate the applicant as an author may be considered if accompanied by a certification from at least 1 of the designated authors that the applicant had the most substantial and direct participation in the preparation of the brief.

(f) Principal Briefs in Appeals. “Principal briefs in appeals” means the primary brief on the merits and excludes reply briefs (including reply briefs that also serve as answer briefs on cross-appeal), jurisdictional briefs, supplemental briefs, and amicus briefs. For good cause shown, the appellate practice certification committee may treat a reply brief (including a reply brief that also serves as an answer brief on cross-appeal), jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the purpose of these rules, if the brief is substantial and reflects a level of effort and preparation comparable to that required to produce a principal brief. For good cause shown, the committee may treat a combined answer brief and initial brief on cross-appeal as separate principal briefs if the brief reflects a level of effort and preparation comparable to that required to produce separate principal briefs.

(g) Petitions or Responses in Extraordinary Writ Cases. “Petitions or responses in extraordinary writ cases” refer to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency. The term includes a petition or response to a petition for a writ of certiorari filed in the Supreme Court of the United States. The term does not include any other petition or response to a petition that merely requests discretionary appellate review, such as a notice to invoke the discretionary jurisdiction of the Supreme Court of Florida, or for permission to appeal to a United States Court of Appeals an order of a district court pursuant to, for example, 28 U.S.C. §1292(b) or Federal Rule of Civil Procedure 23(f).

(h) Good Cause. “Good cause” exceptions allow the appellate practice certification committee the discretion to waive technical compliance with the relevant requirement. The committee may, in its discretion, allow certification or recertification of an individual where the

applicant's proffered circumstances demonstrate that the applicant has the special knowledge, skill, and proficiency, or a reasonable equivalent to satisfy the relevant requirement. The committee will consider a good cause exception only on specific request by the applicant.

Adopted July 1, 1993 (621 So.2d 1032). Amended April 9, 1999; August 17, 2007; May 31, 2013; January 29, 2016; January 20, 2017 by the Board of Governors of The Florida Bar.

RULE 6-13.3 MINIMUM STANDARDS

(a) Substantial Involvement. The applicant must have been engaged in the practice of law for at least 5 years. During the 3-year period immediately preceding the date of application, at least 30 percent of the applicant's practice must have been spent in substantial and direct involvement in appellate practice sufficient to demonstrate special competence as an appellate lawyer. For good cause shown, the appellate practice certification committee may waive up to 2 of the 3 years' substantial involvement for individuals who have served as appellate judges or as a clerk, career attorney, or staff attorney in an appellate court. Substantial involvement during the year immediately preceding the application will not be waived.

(b) Appellate Actions. During the 5-year period immediately preceding application, the applicant must have had sole or primary responsibility in at least 25 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses in extraordinary writ cases.

(c) Oral Arguments. During the 5-year period immediately preceding application, the applicant must have presented at least 5 oral arguments to an appellate court. The oral arguments to an appellate court need not have been presented in the same cases listed on the application as appellate actions. The appellate practice certification committee may waive this requirement on good cause shown.

(d) Education. During the 3-year period immediately preceding the filing of an application, the applicant must demonstrate completion of 45 credit hours of approved continuing legal education for appellate practice certification. Accreditation of educational hours is subject to policies established by the appellate practice certification committee or the board of legal specialization and education.

(e) Peer Review.

(1) The applicant must submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in appellate practice and familiar with the applicant's practice.

(2) The applicant shall submit the names and addresses of at least 2 judges before whom the applicant has appeared on appellate matters within the last 2 years to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The appellate practice certification committee may send reference forms to other lawyers and judges.

(f) Examination. Every applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency and experience in appellate practice – including the recognition, preservation, and presentation of trial error, and knowledge and application of the rules of appellate procedure applicable to state and federal appellate practice in Florida – to justify the representation of special competence to the legal profession and public.

Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007; May 31, 2013; January 29, 2016 by the Board of Governors of The Florida Bar.

RULE 6-13.4 RECERTIFICATION

During the 5-year period immediately preceding application, an applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 30 percent must have been spent in actual participation in appellate practice.

(b) Appellate Actions. The applicant must have had sole or primary responsibility in at least 15 appellate actions for the filing of principal briefs in appeals, or the filing of petitions or responses thereto in extraordinary writ cases. For good cause, the appellate practice certification committee may waive this requirement for applicants who have been continuously certified for 14 or more years.

(c) Oral Arguments. The applicant must have presented at least 5 oral arguments to an appellate court. The oral arguments to an appellate court need not have been presented in the same cases listed on the application as appellate actions. The appellate practice certification committee may waive this requirement on good cause shown.

(d) Education. The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education for appellate practice certification. This requirement may be satisfied by the applicant's participation in at least 30 hours of continuing judicial education approved by the Supreme Court of Florida.

(e) Peer Review.

(1) The applicant must submit the names and addresses of at least 4 lawyers, who are neither relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in appellate practice and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of at least 2 judges before whom the applicant has appeared on appellate matters within the last 2 years to attest to the

applicant's substantial involvement and competence in appellate practice, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The appellate practice certification committee may send reference forms to other lawyers and judges.

(f) Judges.

(1) An applicant who is serving as an appellate court judge on a Florida district court of appeal, the Supreme Court of Florida, a United States court of appeals, or the United States Supreme Court, and who applies for recertification while serving as a judge of that court, will be deemed to have met the requirements of subdivisions (a)-(c) of this rule, and the appellate practice certification committee may waive compliance with the requirements of subdivision (e) of this rule, for good cause shown.

(2) For an applicant who is subject to the Code of Judicial Conduct and who performs or has performed judicial functions on a full-time basis during a substantial portion of the period since the last date of certification, the appellate practice certification committee may waive compliance with the requirements of subdivisions (a) - (c) and (e) of this rule, for good cause shown, provided the applicant has complied with all other requirements for recertification.

(g) Good Cause. Subject to the requirements of rule 6-13.2(h), in determining good cause under this rule, the appellate practice certification committee will consider, if requested, the length of time the applicant has been certified; the applicant's supervisory responsibility for appellate actions or oral arguments since the date of the last certification application; the nature and complexity of the applicant's appellate actions since the last application for certification; the number of appellate actions in the applicant's career; and any health, career, or other factors that may have limited the number of appellate actions or oral arguments since the date of the last application for certification.

Adopted July 1, 1993 (621 So.2d 1032). Amended Nov. 21, 1997; April 9, 1999; August 17, 2007; February 1, 2008; May 31, 2013; January 29, 2016, by the Board of Governors of The Florida Bar.

6-14. STANDARDS FOR BOARD CERTIFICATION IN HEALTH LAW

RULE 6-14.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Health Law." The purpose of the standards is to identify those lawyers who practice in the area of health law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in health law.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-14.2 DEFINITIONS

(a) Health Law. “Health law” means legal issues involving federal, state, or local law, rules or regulations and health care provider issues, regulation of providers, legal issues regarding relationships between and among providers, legal issues regarding relationships between providers and payors, and legal issues regarding the delivery of health care services.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than legal advice or representation (including, but not limited to, work related to the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be treated as the practice of law.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar.

RULE 6-14.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(1) The years of practice of law need not be consecutive.

(2) Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), receipt of an LL.M. degree in health law (or such other related fields approved by the board of legal specialization and education and the health law certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subdivision. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subdivision; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement in the practice of health law during the 3 years immediately preceding the date of application. Upon an applicant’s request and the recommendation of the health law certification committee, the board of legal specialization and education may waive the requirement that the 3 years be “immediately preceding” the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement means the applicant has devoted 40 percent or more of the applicant’s practice to matters in which issues of health law are significant factors and in which the applicant had substantial and direct participation in those health law issues. An applicant must furnish information concerning the frequency of the applicant’s work and the nature of the issues involved. For the purposes of this subdivision the “practice of law” shall be as defined in rule 6-

3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on health law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the health law certification committee but written or oral supplementation may be required.

(c) Peer Review. Every applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, and who can attest to the applicant's reputation for involvement in the field of health law, as well as the applicant's character, ethics, and reputation for professionalism, in accordance with rule 6-3.5(c)(6). The board of legal specialization and education or the health law certification committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The board of legal specialization and education and the health law certification committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in health law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours, at least 18 hours of which must be obtained through attendance at continuing legal education seminars as described in subdivision (1) below. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to health law. Subject to the requirements and limitations set forth above, the education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at and/or preparation of outline material of such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in "health law" at an approved law school or other graduate or undergraduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the health law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(6) such other methods as may be approved by the health law certification committee.

The board of legal specialization and education or the health law certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed

subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. Every applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of health law to justify the representation of special competence to the legal profession and the public.

Added Sept. 1, 1994 (641 So.2d 1327). Amended March 14-16, 1996, by the Board of Governors of The Florida Bar; Oct. 22, 1999, by the Board of Governors of The Florida Bar.

RULE 6-14.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. Applicants must demonstrate a satisfactory showing, as determined by the board of legal specialization and education and the health law certification committee, of continuous and substantial involvement in the field of health law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-14.3(b), except that the board of legal specialization and education and the health law certification committee may accept an affidavit from the applicant attesting to the applicant's compliance with the substantial involvement requirement.

(b) Continuing Legal Education Requirement. Applicants must demonstrate the completion of at least 100 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified health law attorneys. If the applicant has not attained 100 hours of continuing legal education, but has attained more than 60 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) Peer Review. Peer review shall be conducted in accordance with the standards set forth in rule 6-14.3(c).

(d) Examination Requirement. If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the health law certification committee determine that the applicant may not meet the standards in health law established under this chapter, the board of legal specialization and education and the health law certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Added Sept. 1, 1994 (641 So.2d 1327). Amended Oct. 22, 1999, by the Board of Governors of The Florida Bar.

**6-15. STANDARDS FOR BOARD CERTIFICATION IN IMMIGRATION AND
NATIONALITY LAW
RULE 6-15.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Immigration and Nationality Law.” The purpose of the standards is to identify those lawyers who practice immigration and nationality law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in immigration and nationality law.

Added Sept. 1, 1994 (641 So.2d 1327); amendment approved by Board of Governors on consent agenda October 3, 2008, effective October 3, 2008. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-15.2 DEFINITIONS

(a) Immigration and Nationality Law. “Immigration and nationality law” is the law dealing with all aspects of the United States Immigration and Nationality Act.

(b) Practice of Law. The “practice of law” for this area is defined as set out at rule 6-3.5(c)(1).

Added Sept. 1, 1994 (641 So.2d 1327).

RULE 6-15.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been engaged in the practice of law for at least 5 years preceding the date of application.

(b) Substantial Involvement. The applicant must demonstrate to the immigration and nationality certification committee substantial involvement in the practice of immigration and nationality law during the 3 years immediately preceding the date of application. Substantial involvement means that the applicant has devoted 40 percent or more of the applicant’s practice to matters in which issues of immigration and nationality law are significant factors and in which the applicant had substantial and direct participation in those issues. Matters in which issues of immigration and nationality law are significant factors include, but are not limited to:

(1) the representation of clients before the United States Citizenship and Immigration Services and/or Customs and Border Patrol and/or Immigration and Customs Enforcement through either the preparation of petitions and applications for immigration benefits and discretionary relief or the appearance as counsel at deferred inspections, adjustment of status, and other interviews;

(2) the representation of clients before the Executive Office for Immigration Review during exclusion, deportation, removal, asylum only, bond proceedings, and appeals;

(3) the representation of clients before the Department of Labor through the preparation of Labor Certification Applications, Labor Condition Applications, and such other Department of Labor applications, petitions, and processes as are required in the Immigration and Nationality Act as a prerequisite for immigration benefits;

(4) the representation of clients before the Department of State in matters pertaining to the consular processing of visa applications; and

(5) the representation of clients in matters of original and appellate jurisdiction before United States district courts and United States courts of appeals concerning immigration and nationality matters.

The immigration and nationality certification committee may waive the 3 years immediately preceding the date of application requirement upon good cause shown.

(c) Peer Review. The applicant must submit to the immigration and nationality certification committee the names and addresses of 5 attorneys who are neither relatives nor current associates or partners, as references to attest to the applicant's reputation for substantial involvement and competence in the field of immigration and nationality law, as well as the applicant's character, ethics, and reputation for professionalism. No less than 1 reference shall be board certified in immigration and nationality law. The immigration and nationality law certification committee may authorize references from persons other than attorneys upon good cause shown.

(d) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in immigration and nationality law during the 3-year period immediately preceding the date of application.

Accreditation of educational hours is subject to policies established by the immigration and nationality law certification committee or the board of legal specialization and education.

(e) Examination. The applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, proficiency, and professionalism in the field of immigration and nationality law to justify the representation of special competence to the legal profession and the public.

Added Sept. 1, 1994 (641 So.2d 1327); amended by Board of Governors on October 3, 2008, effective October 3, 2008.

RULE 6-15.4 RECERTIFICATION

During the 5-year period immediately preceding application, the applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicants must demonstrate continuous and substantial involvement in the field of immigration and nationality law during the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with

the standards set forth in rule 6-15.3(b). Upon good cause shown, the immigration and nationality law certification committee may waive all or any portion of the substantial involvement requirement if an applicant was or is currently a judge presiding over matters of immigration and nationality law.

(b) Education. The applicants must demonstrate completion of 100 credit hours of approved continuing legal education in immigration and nationality law. At least 60 of such hours shall be during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the immigration and nationality law certification committee or the board of legal specialization and education.

(c) Peer Review. Peer review shall be conducted in accordance with the standards set forth in rule 6-15.3(c).

(d) Examination Requirement. If the immigration and nationality law certification committee determines that the applicant does not meet the standards set forth in subdivision (b) of this rule, the immigration and nationality certification committee may, for good cause shown, require that the applicant pass the examination in lieu thereof.

Added Sept. 1, 1994 (631 So.2d 1327). Amended Jan. 26, 1996, by the Board of Governors of The Florida Bar; Amended October 3, 2008 by Board of Governors of The Florida Bar, effective October 3, 2008.

6-16. STANDARDS FOR BOARD CERTIFICATION IN BUSINESS LITIGATION

RULE 6-16.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued a certificate, identifying the lawyer as “Board Certified in Business Litigation.” The purpose of the standards is to identify those lawyers who practice in the area of business litigation and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified business litigation lawyers.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendments approved by Board of Governors on January 31, 2014.

RULE 6-16.2 DEFINITIONS

(a) Business Litigation. “Business litigation” is the practice of law dealing with the legal problems from commercial and business relationships, including litigation of controversies. “Business litigation” includes evaluating, handling, and resolving such controversies before state courts, federal courts, administrative agencies, mediators, and arbitrators. Matters not qualifying for business litigation include areas of practice dealing with personal injury, routine collection matters, marital and family law, or workers’ compensation. Courts of “general jurisdiction” include state circuit courts, federal district courts, and courts of similar jurisdiction in other states, but not county courts.

(b) Practice of Law. The “practice of law” for this area is defined in subdivision (c)(1) of rule 6-3.5. The practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy this requirement.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; approved by the Board of Governors on August 22, 2003; amendments approved by Board of Governors on January 31, 2014.

RULE 6-16.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have at least 5 years of the actual practice of law immediately preceding application, of which at least 30 percent has been spent in active participation in business litigation.

(b) Minimum Number of Matters. The applicant must have had substantial involvement in a minimum of 25 contested business litigation matters during the 5-year period immediately preceding application. These matters must have proceeded at least to the filing of a complaint or similar pleading and involve substantial legal or factual issues. At least 8 of the 25 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, an arbitration panel, administrative agency, bankruptcy court, or other similar body. At least 1 of the 8 matters must have been tried before a jury during the 10-year period immediately preceding application. If the applicant has not tried a business litigation matter before a jury, the business litigation certification committee may consider any civil dispute tried before a jury within the allowable time period to satisfy the jury trial requirement. “Submission to the trier of fact” and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant. If the applicant has not participated in 8 matters submitted to the trier of fact for resolution, the applicant may substitute completion of an advanced trial advocacy seminar for 1 of the 8 matters, either by teaching, attendance, or any combination. An advanced trial seminar submitted for the jury trial requirement must contain a jury trial component, including voir dire, opening statements, and a closing argument. This seminar must be 3 full days, approved by the business litigation certification committee, and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. All course materials for the seminar must be submitted to the business litigation certification committee to be considered for substitute credit. The business litigation certification committee may consider involvement in protracted adversary proceedings to satisfy any of these requirements for good cause shown. A “protracted adversary proceeding” is a “business litigation” matter which, by its very nature, is so time consuming as to preclude the applicant from meeting the requirements of this subdivision. In order to demonstrate compliance with the requirements of this section, the following criteria will be applicable:

(1) summary judgments will not count as 1 of the 8 matters submitted to the trier of fact;

(2) submission to the trier of fact and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant;

(3) each preliminary injunction or other evidentiary hearing will count as 1 of the 8 matters submitted to the trier of fact; and,

(4) each matter in which the applicant supervises an associate will qualify the matter as 1 of the 25 but not as 1 of the 8 matters submitted to the trier of fact.

(c) Substantial Involvement. The applicant must have substantial involvement in contested business litigation cases sufficient to demonstrate special competence as a business litigation lawyer. Substantial involvement includes active participation in client interviewing, counseling and investigating, preparation of pleadings, participation in discovery, taking of testimony, presentation of evidence, negotiation of settlement, drafting and preparation of business litigation settlement agreements, and argument and trial of business law cases.

(d) Peer Review. The applicant must submit names and addresses of 5 lawyers, who are not the applicant's associates or partners, as references to attest to the applicant's special competence and substantial involvement in business litigation, as well as the applicant's character, ethics, and reputation for professionalism. The lawyers themselves must be substantially involved in business litigation and familiar with the applicant's practice. At least 1 of these references must be a judge or presiding officer of a court or other tribunal before whom the applicant has appeared as an advocate in a business litigation matter in the 2-year period immediately preceding the application. The business litigation certification committee may send reference forms to other lawyers, judges, or officers and conduct other investigation as necessary.

(e) Education. The applicant must demonstrate completion of at least 50 hours of approved continuing legal education in business litigation within the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the business litigation certification committee or the board of legal specialization and education.

(f) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, experience, proficiency, and professionalism in business litigation to justify representation of special competence to the legal profession and to the public.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amended effective June 29, 2000, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendment approved by BoG on 6/2/06 and effective on 6/5/06; amendments approved by Board of Governors on January 31, 2014; amendments approved by the Board of Governors on October 12, 2018..

RULE 6-16.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in the field of business litigation in accordance with the standards in subdivision (c) of rule 6-16.3.

(b) Minimum Number of Matters. The applicant must have had substantial involvement in a minimum of 25 contested business litigation matters. These matters must have proceeded at least to the filing of a complaint or similar pleading and involve substantial legal or factual issues. At least 5 of the 25 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing, as described in subdivision (b) of rule 6-16.3. If the applicant has not participated in 5 matters submitted to the trier of fact for resolution, the applicant may substitute completion of an advanced trial advocacy seminar for 1 of the 5 required matters, either by teaching, attendance, or a combination. The seminar must be 3 full days, approved by the business litigation certification committee, and include as part of its curriculum active participation by the applicant in simulated courtroom proceedings. All course materials for the seminar must be submitted to the business litigation certification committee to be considered for substitute credit toward 1 of the 5 matters. The business litigation certification committee may consider involvement in protracted adversary proceedings, as defined in subdivision (b) of rule 6-16.3 to satisfy any of these requirements on good cause shown. In order to demonstrate compliance with the requirements of this section, the following criteria are applicable:

(1) summary judgments will not count as 1 of the 5 matters submitted to the trier of fact;

(2) submission to the trier of fact and trial before a jury requires completion of the case in chief of the plaintiff, petitioner, or claimant;

(3) each preliminary injunction or other evidentiary hearing counts as 1 of the 5 matters submitted to the trier of fact;

(4) each matter in which the applicant supervises an associate will qualify the matter as 1 of the 25 but not as 1 of the 5 matters submitted to the trier of fact.

The business litigation certification committee may waive compliance with the evidentiary hearing criteria for an applicant who has been continuously board certified as a business litigation lawyer for a period of 14 years or more on special application for good cause shown.

(c) Education. The applicant must demonstrate completion of 50 hours of approved continuing legal education since the date of the last application for certification. Accreditation of educational hours is subject to policies established by the business litigation certification committee or the board of legal specialization and education.

(d) Peer Review. The applicant must submit names and addresses of 5 lawyers, who are not the applicant's associates or partners, as references to attest to the applicant's special competence and substantial involvement in business litigation, as well as the applicant's character, ethics, and reputation for professionalism. The lawyers themselves must be substantially involved in business litigation and familiar with the applicant's practice. At least 1 of these references must be a judge or presiding officer of a court or other tribunal before whom

the applicant has appeared as an advocate in a business litigation matter in the 2-year period immediately preceding the application. The business litigation certification committee may send reference forms to other lawyers, judges, or officers and conduct other investigation as necessary.

(e) **Judges.** On special application, for good cause shown, an applicant who is serving as a judge and applies for recertification will have met the requirements of rule 6-16.4. The business litigation certification committee may waive compliance with any portion of the recertification criteria for an applicant who is an officer of any judicial system as defined in the Code of Judicial Conduct and who performs or has performed judicial functions on a full-time basis during a substantial portion of the period since the last date of certification.

Added July 20, 1995 (658 So.2d 930). Amended July 17-18, 1996, by the Board of Governors of The Florida Bar; September 18-20, 1997, by the Board of Governors of The Florida Bar; amendment approved by Board of Governors on August 22, 2003; amendment approved by BoG on 6/2/06 and effective 6/5/06; amendment approved by Board of Governors on March 28, 2008, effective March 28, 2008; amendments approved by Board of Governors on January 31, 2014.

6-17. STANDARDS FOR BOARD CERTIFICATION IN ADMIRALTY AND MARITIME LAW

RULE 6-17.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Admiralty and Maritime Law.” The purpose of the standards is to identify those lawyers who practice admiralty and maritime law and who have demonstrated special knowledge, skills and proficiency to be properly identified to the public as board certified in admiralty and maritime law.

Added July 20, 1995 (658 So.2d 930). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-17.2 DEFINITIONS

(a) **Admiralty Law.** “Admiralty and Maritime Law” is that distinct and separate practice of law dealing with the corpus of rules, concepts, and legal practices governing vessels, the shipping industry, the carrying of goods and passengers by water as well as related maritime concepts. Admiralty and maritime law includes the substantive law and procedural rules associated with the general maritime law of the United States, admiralty jurisdiction and procedure, personal injury and wrongful death of seamen and passengers aboard vessels, compensation for injury and wrongful death of longshoremen and harbor workers, government regulation of marine safety and the maritime industry, carriage of goods, charter parties, salvage, general average, collision, marine insurance, maritime liens, limitation of liability, marine pollution and environmental law, maritime arbitration, recreational vessels, vessel finance and documentation, international aspects of maritime practice as well as other maritime topics which because of their special history, as well as for historical and practical reasons, have been recognized as distinctly different from our modern system of common law and have been traditionally grouped and practiced as “admiralty and maritime law.”

(b) Practice of Law. A minimum of 5 years in the practice of law including substantial involvement in the practice of admiralty and maritime law as set forth in rule 6-17.3(b). The term “practice of law” as used in these standards shall be as defined in rule 6-3.5(c)(1).

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

RULE 6-17.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for period of 5 years as of the date of application.

Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), receipt of an LL.M degree in admiralty law, ocean law, maritime law or such other related fields approved by the board of legal specialization and education and admiralty law certification committee from an approved law school shall be deemed to constitute 1 year of the practice of law for purposes of the 5-year practice requirement but not the 5-year bar membership requirement.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement in the practice of admiralty and maritime law during the 5 years immediately preceding the date of application, including devoting not less than 35 percent of such practice to admiralty and maritime law during each of the 3 years immediately preceding the date of application. Except for the 3 years immediately preceding the date of application, upon the applicant’s request and the recommendation of the admiralty and maritime law certification committee, the board of legal specialization and education may waive the requirement that the 5 years be “immediately preceding” the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Except for the 3 years immediately preceding the date of application, receipt of an LL.M degree in admiralty law, ocean law, maritime law (or such other degree containing substantial admiralty and maritime law content as approved by the board of legal specialization and education) from an approved law school may substitute for 1 year of substantial involvement. An applicant must furnish information concerning the frequency of work and the nature of issues involved. For the purposes of this section, the “practice of law” shall be as defined in rule 6-3.5(c)(1) except that it shall also include time devoted to lecturing and/or authoring books or articles on admiralty and maritime law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the admiralty law certification committee, but written or oral supplementation may be required.

(c) Peer Review. The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant’s practice, not including attorneys who currently practice in the applicant’s law firm, who can attest to the applicant’s special competence and substantial involvement in the field of admiralty and maritime law, as well as the applicant’s character, ethics, and reputation for professionalism. No less than 2 references shall be board certified in admiralty and maritime law or shall have, in the judgment of the committee, an established and recognized admiralty and maritime law practice. The board of legal specialization and education

and admiralty law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(d) Education. During the 3-year period immediately preceding the date of the application, the applicant must demonstrate completion of the continuing legal education requirements in admiralty and maritime law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 50 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to admiralty and maritime law. The education requirement may be satisfied by one or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;
- (3) authoring books or articles published in professional periodicals or other professional publications;
- (4) teaching courses in admiralty and maritime law and related subjects at an approved law school or other graduate level program presented by a recognized professional education association;
- (5) such other methods as may be approved by the board of legal specialization and education and the admiralty certification committee.

The board of legal specialization and education and the admiralty law certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination, applied uniformly to all applicants, that will be practical and comprehensive and designed to demonstrate special knowledge, skills, and proficiency in admiralty and maritime law topics including jurisdiction, procedure, personal injury and wrongful death, marine insurance and such other topics as may be selected by the admiralty certification committee. Such examination shall justify the representation of special competence in the field of admiralty law to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

RULE 6-17.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the admiralty law certification committee, of continuous and substantial involvement in admiralty and maritime law throughout the period since the last date of certification. The demonstration of substantial involvement of at least 35 percent during each year of certification or prior recertification shall be made in accordance with the standards set forth in rule 6-17.3(b).

(b) Education. Completion of at least 55 hours of approved continuing legal education since the filing of the last application for certification. This requirement shall be satisfied by the applicant's participation in approved continuing legal education pursuant to rule 6-17.3(d)(1) through (5).

(c) Peer Review. Submission of the names and addresses of 3 individuals who are active in admiralty and maritime law, including but not limited to lawyers and judges who are familiar with the applicant's practice, excluding persons who are currently employed in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of admiralty and maritime law, as well as the applicant's character, ethics, and reputation for professionalism, during the period since the last date of certification. The board of legal specialization and education or the admiralty law certification committee may solicit references from persons other than those whose names are submitted by the applicant and may also make additional inquiries as deemed appropriate.

(d) Examination. If, after reviewing the material submitted by an applicant for recertification and the peer review, the admiralty law certification committee determines the applicant may not meet the standards for admiralty law certification established under this chapter, the applicant may be required, as a condition of recertification, to pass the admiralty and maritime examination given to new applicants.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

6-18. STANDARDS FOR BOARD CERTIFICATION IN CITY, COUNTY AND LOCAL GOVERNMENT LAW

RULE 6-18.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in City, County and Local Government Lawyer." The purpose of the standards is to identify those lawyers who practice city, county and local government law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in city, county and local government law.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-18.2 DEFINITIONS

(a) City, County and Local Government Law. “City, County and Local Government Law” is the practice of law dealing with legal issues of county, municipal or other local governments, such as, but not limited to, special districts, agencies and authorities, including litigation in the federal and state courts and before administrative agencies; the preparation of laws, ordinances and regulations; and the preparation of legal instruments for or in behalf of city, county and local governments.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Notwithstanding anything in the definition to the contrary, legal work done primarily for a purpose other than providing legal counsel or representation (including, but not limited to, work related to the administration of government or representing government as an elected official or as a state legislative lobbyist) shall not be treated as the practice of law.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

RULE 6-18.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), receipt of an LL.M. degree in urban affairs (or such other related fields approved by the board of legal specialization and education and the city, county and local government certification committee) from an approved law school shall be deemed to constitute 1 year of the practice of law for purpose of the 5-year practice requirement (but not the 5-year bar membership requirement) under this subsection. However, an applicant may not receive credit for more than 1 year of practice for any 12-month period under this subsection; accordingly, for example, an applicant who, while being engaged in the practice of law, receives an LL.M. degree by attending night classes, would not receive credit for the practice of law requirement by virtue of having received the LL.M. degree.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement in the practice of Florida city, county and local government law during each of the 3 years immediately preceding the date of application. Upon an applicant’s request and the recommendation of the city, county and local government certification committee, the board of legal specialization and education may waive the requirement that each of the 3 years be “immediately preceding” the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances. Substantial involvement means the applicant has devoted 40 percent or more of the applicant’s practice to matters in which issues of Florida city, county and local government law are significant factors and in which the applicant had substantial and direct participation in those issues. An applicant must furnish information concerning the frequency of the applicant’s work and the nature of the

issues involved. For the purpose of this subsection the “practice of law” shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on city, county and local government law if the applicant was otherwise engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the city, county and local government certification committee but written or oral supplementation may be required.

(c) Peer Review. The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant’s practice, not including attorneys who are currently employed by the same governmental entity as the applicant or who currently practice in the applicant’s law firm, who can attest to the applicant’s reputation for special competence and substantial involvement, as well as the applicant’s character, ethics, and reputation for professionalism, in the field of city, county and local government law. Such lawyers themselves shall be substantially involved in Florida city, county and local government law. The board of legal specialization and education and the city, county and local government certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(d) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in Florida city, county and local government law as follows: the required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to Florida city, county and local government law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in “city, county and local government law” at an approved law school or other graduate level program presented by a recognized professional education association;

(5) such other methods as may be approved by the board of legal specialization and education and the city, county and local government certification committee.

The board of legal specialization and education or the city, county and local government certification committee shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method of establishment of the number of hours allocable to any of the above listed paragraphs. Such rules or regulations shall provide that hours shall be

allocable to each separate but substantially different lecture, article, or other activity described in subsections (2), (3), and (4) above.

(e) Examination. The applicant must pass a written examination, applied uniformly to all applicants, designed to demonstrate sufficient knowledge, skills, and proficiency in the field of Florida city, county and local government law to justify the representation of special competence to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

RULE 6-18.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the city, county and local government certification committee, of continuous and substantial involvement in the field of Florida city, county and local government law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-18.3(b), except that the board of legal specialization and education and the city, county and local government certification committee may accept an affidavit from the applicant attesting to the applicant's compliance with the substantial involvement requirement.

(b) Education. Completion of at least 60 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified city, county and local government lawyers. If the applicant has not attained 60 hours of continuing legal education, but has attained more than 30 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) Peer Review. The applicant shall submit the names and addresses of 3 other attorneys who are familiar with the applicant's practice, not including attorneys who are currently employed by the same governmental entity as the applicant or who currently practice in the applicant's law firm, who can attest to the applicant's reputation for special competence and substantial involvement, as well as the applicant's character, ethics, and reputation for professionalism, in the field of city, county and local government law. Such lawyers themselves shall be substantially involved in Florida city, county and local government law. The board of legal specialization and education and the city, county and local government certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(d) Examination. If, after reviewing the material submitted by an applicant for recertification, the board of legal specialization and education and the city, county and local government certification committee determine that the applicant may not meet the standards in city, county and local government law established under this chapter, the board of legal

specialization and education and the city, county and local government certification committee may require, as a condition of recertification, that the applicant pass the written examination given by the board of legal specialization and education to new applicants.

Added July 20, 1995 (658 So.2d 930). Amended Dec. 11, 1998, by the Board of Governors of The Florida Bar.

6-19. STANDARDS FOR BOARD CERTIFICATION IN AVIATION LAW

RULE 6-19.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Aviation Law.” The purpose of the standards is to identify those lawyers who practice aviation law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in aviation law.

Added July 20, 1995 (658 So.2d 930); Amended by Board of Governors October 3, 2008. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-19.2 DEFINITIONS

(a) Aviation Law. “Aviation law” includes all facets of the law dealing with aeronautical and aerospace activities and the ownership, operation, maintenance, and use of aircraft, airports, and airspace. It also involves licensing and aeromedical issues encompassed by the Federal Aviation Act and the associated federal aviation regulations promulgated under it. It also includes all facets of the law dealing with space travel and the use of outer space, and all facets of the law dealing with aviation and airline employment.

(b) Practice of Law. The “practice of law” for this area is defined in chapter 6 of The Rules Regulating the Florida Bar.

Added July 20, 1995 (658 So.2d 930); Amended and effective January 20, 2017, by Board of Governors.

RULE 6-19.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement sufficient to show special knowledge, skills, and proficiency in the practice of aviation law during the 3 years immediately preceding the date of application. Substantial involvement is defined as including devoting at least 30 percent of one’s practice to matters in which issues of aviation law are significant factors and in which the applicant had substantial and direct

participation in those aviation issues. Upon the applicant's request and the recommendation of the aviation law certification committee, the board of legal specialization and education may waive the requirement that the 3 years be "immediately preceding" the date of application if the board of legal specialization and education determines the waiver is warranted by special and compelling circumstances.

The applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision, the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of aviation law if the applicant was engaged in the practice of law during such period.

Demonstration of compliance with this requirement shall be made initially in the form of a questionnaire approved by the aviation law certification committee, but written or oral supplementation may be required.

(c) Peer Review. The applicant shall submit the names and addresses of 5 attorneys or judges, who are neither relatives nor current associates or partners, who are familiar with the applicant's practice and who can attest to the applicant's special competence and substantial involvement in the field of aviation law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the aviation law certification committee may authorize references from persons other than attorneys in such cases as deemed appropriate. The board of legal specialization and education and the aviation law certification committee may also make such additional inquiries as deemed appropriate.

(d) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of filing an application, the applicant has met the continuing legal education requirements necessary for aviation law. The required number of hours must be established by the board of legal specialization and education and must in no event be less than 60 hours. Accreditation of educational hours is subject to policies established by the aviation law certification committee or the board of legal specialization and education.

(e) Examination. The applicant must pass a written examination that is practical, objective, and designed to demonstrate special knowledge, skills, and proficiency in aviation law to justify the representation of special competence to the legal profession and the public.

Added July 20, 1995 (658 So.2d 930); Amended October 3, 2008 by The Florida Bar Board of Governors, effective October 3, 2008.

RULE 6-19.4 RECERTIFICATION

During the 5-year period immediately preceding application, an applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must make a satisfactory showing, as determined by the board of legal specialization and education and the aviation law committee, of continuous and substantial involvement in aviation law throughout the period since the last date

of certification. The demonstration of substantial involvement of at least 30 percent during the 5 years prior to recertification shall be made in accordance with the standards set forth in rule 6-19.3(b).

(b) Education. The applicant must show completion of at least 60 hours of accredited continuing legal education in aviation law since the filing of the last application for certification.

(c) Peer Review. The applicant shall submit the names and addresses of 3 attorneys or judges, who are neither relatives nor current associates or partners, who are familiar with the applicant's practice and who can attest to the applicant's special competence and substantial involvement in the field of aviation law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the aviation law certification committee may also make such additional inquiries as deemed appropriate.

Added July 20, 1995 (658 So.2d 930); Amended October 3, 2008.

6-20. STANDARDS FOR BOARD CERTIFICATION IN ELDER LAW

RULE 6-20.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may apply to The Florida Bar board of legal specialization and education for a certificate identifying the lawyer as "Board Certified in Elder Law." The purpose of the standards is to identify those lawyers who practice in the area of elder law and who have the experience, knowledge, skills, and judgment to be properly identified to the public as board certified in elder law.

Added July 17, 1997 (697 So.2d 115). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-20.2 DEFINITIONS

(a) Elder Law. "Elder law" means legal issues involving health and personal care planning, including: advance directives; lifetime planning; family issues; fiduciary representation; capacity; guardianship; power of attorney; financial planning; public benefits and insurance; resident rights in long-term care facilities; housing opportunities and financing; employment and retirement matters; income, estate, and gift tax matters; estate planning; probate; nursing home claims; age or disability discrimination and grandparents' rights. The specialization encompasses all aspects of planning for aging, illness, and incapacity. Elder law clients are predominantly seniors, and the specialization requires a practitioner to be particularly sensitive to the legal issues impacting these clients.

Added July 17, 1997 (697 So.2d 115).

RULE 6-20.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign

country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement in elder law as defined by the following:

(1) At least 5 years of law practice, of which at least 40 percent has been spent in active participation in elder law. At least 3 years of this practice shall be immediately preceding application.

(2) Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of elder law are significant factors and in which the applicant had substantial and direct participation in those elder law issues in each of the 3 years preceding the application. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on elder law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the elder law certification committee but written or oral supplementation may be required.

(c) Practical Experience. During the 3 years immediately preceding the application, the applicant shall have provided legal services in at least 60 matters as follows:

(1) Forty must be in categories listed in (A) through (E) below, with at least 5 matters in each category.

(2) Ten of the matters must be in categories listed in (F) through (M) below. No more than 5 in any 1 category may be credited toward the total requirement of 60 matters.

(3) The remaining 10 matters may be in any category listed in (A) through (M) below, and are not subject to the limitation contained in parts (1) or (2) of this subdivision.

(4) As used in this subdivision, an applicant will be considered to have "provided legal services" if the applicant: provided advice (written or oral, but if oral, supported by substantial documentation in the client's file) tailored to and based on facts and circumstances specific to a particular client; drafted legal documents such as, but not limited to, wills, trusts, or health care directives, provided that those legal documents were tailored to and based on facts and circumstances specific to the particular client; prepared legal documents and took other steps necessary for the administration of a previously prepared legal directive such as, but not limited to, a will or trust; or provided representation to a party in contested litigation or administrative matters concerning an elder law issue.

(5) The categories are:

(A) Health and personal care planning, including giving advice regarding and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, attorneys-in-fact, and families about medical and life-sustaining choices, and related personal life choices.

(B) Pre-mortem legal planning, including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and tax implications of any proposed action.

(C) Fiduciary representation, including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.

(D) Legal capacity counseling, including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.

(E) Public benefits advice, including planning for and assisting in obtaining Medicare, Medicaid, Social Security, Supplemental Income, Veterans' benefits, and food stamps.

(F) Advice on insurance matters, including analyzing and explaining the types of insurance available, such as health, life, long-term care, home care, COBRA, medigap, long-term disability, dread disease, and burial/funeral policies.

(G) Resident rights advocacy, including advising patients and residents of hospitals, nursing facilities, continuing care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.

(H) Housing counseling, including reviewing the options available and the financing of those options such as mortgage alternatives, renovation loan programs, life care contracts, and home equity conversion.

(I) Employment and retirement advice, including pensions, retiree health benefits, unemployment benefits, and other benefits.

(J) Income, estate, and gift tax advice, including consequences of plans made and advice offered.

(K) Counseling about tort claims against nursing homes.

(L) Counseling with regard to age and/or disability discrimination in employment and housing.

(M) Litigation and administrative advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

(d) Peer Review. The applicant shall submit the names and addresses of 5 other attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of elder law. The board of legal specialization and education and elder law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to complete peer review, as provided elsewhere in these rules.

(e) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in elder law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 60 hours. Credit for attendance at continuing legal education seminars shall be given only for programs that are directly related to elder law. The education requirement may be satisfied by 1 or more of the following:

(1) attendance at continuing legal education seminars meeting the requirements set forth above;

(2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;

(3) authoring articles or books published in professional periodicals or other professional publications;

(4) teaching courses in elder law at an approved law school or other graduate level program presented by a recognized professional education association;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the elder law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(6) such other methods as may be approved by the board of legal specialization and education and the elder law certification committee.

The elder law certification committee shall establish policies applicable to this subdivision, including, but not limited to, the method of establishment of the number of hours allocable to any of the preceding requirements. Such policies shall provide that hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(f) Examination. The applicant must pass an examination designed to demonstrate sufficient knowledge, proficiency, and experience in elder law to justify the representation of special competence to the legal profession and the public.

(g) Exemption. Any applicant who as of the effective date of these standards is: currently certified by the National Elder Law Foundation and meets all other requirements set forth under subdivisions (a) through (e), shall be exempt from the examination. This exemption shall only be applicable with respect to any applicant meeting the aforesaid requirements and whose application is submitted within 2 years from the effective date of these standards.

Added July 17, 1997 (697 So.2d 115).

RULE 6-20.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. Applicants must demonstrate a satisfactory showing, as determined by the board of legal specialization and education and the elder law certification committee, of continuous and substantial involvement in the field of elder law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-20.3(b) and (c).

(b) Continuing Legal Education. Applicants must demonstrate the completion of at least 125 hours of continuing legal education since the filing of the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified elder law attorneys. If the applicant has not attained 125 hours of continuing legal education, but has attained more than 75 hours during such period, successful passage of the written examination given by the board of legal specialization and education to new applicants shall satisfy the continuing legal education requirements.

(c) Peer Review. Peer review shall be conducted in accordance with the standards set forth in rule 6-20.3(d).

Added July 17, 1997 (697 So.2d 115).

6-21. STANDARDS FOR BOARD CERTIFICATION IN INTERNATIONAL LAW

RULE 6-21.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in International Law.” The purpose of the standards is to identify those lawyers who practice in the area of international law and have the special knowledge, skills, and proficiency to be properly identified to the public as board certified in international law.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-21.2 DEFINITIONS

(a) International Law. “International law” is the practice of law dealing with issues, problems, or disputes arising from any and all aspects of the relations between or among states and international organizations as well as the relations between or among nationals of different countries, or between a state and a national of another state, including transnational business transactions, multinational taxation, customs, and trade. The term “international law” includes foreign and comparative law.

(b) Practice of Law. The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant’s activity is spent as a teacher of international law subjects in an accredited law school.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

RULE 6-21.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law, either in the United States or abroad, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia, for a period of not less than 5 years as of the date of application. The years of law practice need not be consecutive. Receipt of an LL.M. degree in international law, as defined in rule 6-21.2(a), or in such other field as may be approved by the international law certification committee, shall be deemed to constitute 1 year of the practice of law requirement, but not the 5-year bar membership requirement, specified in this subdivision.

(b) Substantial Involvement. The applicant shall demonstrate substantial involvement in the practice of international law during each of the 3 years immediately preceding the date of application. Except for the 2 years immediately preceding application, receipt of an LL.M. degree, as defined in rule 6-21.2(a), may substitute for 1 year of substantial involvement. Substantial involvement shall mean that the applicant has devoted 50 percent or more of the applicant’s practice to matters in which issues of international law played a significant role and in which the applicant had substantial and direct participation. For purposes of this subdivision, time devoted to lecturing on or writing about international law may be included. Although demonstration of compliance with this requirement shall be made initially through a form approved by the international law certification committee, the international law certification committee may at its option require written or oral supplementation.

(c) Education. The applicant shall demonstrate that during the 3-year period immediately preceding the date of application, the applicant has completed at least 60 hours of continuing legal education in the field of international law. This requirement can be met through: attendance at continuing legal education seminars on international law; satisfactory completion of graduate level law school courses while enrolled in an LL.M. program in international law or comparative law; satisfactory completion of graduate level law school courses involving international law aspects while enrolled in a graduate law program; lecturing at continuing legal

education seminars on international law; authoring articles or books on international law; or teaching courses on international law at an accredited law school. The international law certification committee shall promulgate uniform regulations for the operation of the subdivision.

(d) Peer Review. The applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international law, as well as the applicant's character, ethics, and reputation for professionalism. The international law certification committee may at its option send reference forms to other attorneys and judges.

(e) Examination. The applicant shall take and pass an examination designed to demonstrate sufficient knowledge, skills, and proficiency in international law to justify the representation of special competence to the legal profession and the public.

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

RULE 6-21.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. The applicant shall demonstrate continuous and substantial involvement in the practice of international law throughout the period since the last date of certification. The demonstration of substantial involvement shall be made in accordance with the standards set forth in rule 6-21.3(b).

(b) Education. The applicant shall show completion of at least 75 hours of continuing legal education in international law since the filing of the last application for certification. In determining whether an applicant has satisfied this requirement, the standards set forth in rule 6-21.3(c) shall be followed.

(c) Peer Review. The applicant shall submit the names and addresses of 5 other attorneys or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international law, as well as the applicant's character, ethics, and reputation for professionalism. The international law certification committee may at its option send reference forms to other attorneys and judges.

(d) Examination. If, after reviewing the material submitted for recertification, the international law certification committee determines that the applicant may not meet the standards established by this chapter, it may require, as a condition of recertification, that the applicant take and pass the examination specified in rule 6-21.3(e).

Added Dec. 18, 1997, effective Jan. 1, 1998 (702 So.2d 1261). Amended April 9, 1999, by the Board of Governors of The Florida Bar.

6-22. STANDARDS FOR BOARD CERTIFICATION IN ANTITRUST AND TRADE REGULATION LAW

RULE 6-22.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Antitrust and Trade Regulation Law.” The purpose of the standards is to identify those lawyers who practice in the area of antitrust law, unfair methods of competition, and deceptive, unfair, or unconscionable trade practices and who have the special knowledge, skills, experience, and judgment, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in antitrust and trade regulation law. Applicants are required to establish that they have a special ability as a consequence of broad and varied experience in antitrust and trade regulation law, including the following:

- (a) a ready grasp of the substantive and procedural law bearing on this area of practice;
- (b) an awareness of and experience with the range of appropriate courses of action and remedies that can be invoked in aid of clients involved in such matters;
- (c) a sound judgment in proposing solutions and approaches, so that proportion both as to expense and delay is maintained between the nature of the problem to be solved and the cost and elaborateness of the proposed response or solution; and
- (d) an attitude of professionalism in every aspect of the applicant’s approach to clients, courts, or administrative bodies, and fellow practitioners.

Added and amended March 23, 2000 (763 So.2d 1002); amended December 5, 2003. Amended and effective October 16, 2015 by Board of Governors.

RULE 6-22.2 DEFINITIONS

(a) **Antitrust Law.** “Antitrust law” covers the practice of law dealing with anticompetitive conduct or structure that may reduce consumer welfare in the United States. The primary federal antitrust laws are the Sherman Act, the Clayton Act, the Robinson-Patman Amendments to the Clayton Act, and the Federal Trade Commission Act. In addition, there are parallel state statutes. Generally, the practices that the antitrust laws are concerned with involve, but are not limited to: price fixes, limitations on production, division of markets, boycotts, attempts to monopolize and monopolization, tying of products, covenants to restrain trade, exclusive dealing contracts, price discrimination, and other exclusionary, predatory, or economically discriminatory activities.

(b) **Trade Regulation Law.** “Trade regulation law” covers the substantive area of law dealing with deceptive, unfair, or unconscionable acts or practices, and unfair methods of competition under the Federal Trade Commission Act and Florida’s Deceptive and Unfair Trade Practices Act.

(c) Practice of Law. The “practice of law” for this area is defined as set forth in rule 6-3.5(c)(1).

(d) Contested Matters. “Contested matters” shall be defined as matters that were pending before an enforcement agency, a tribunal, or court that were adversarial and binding in which the applicant had a significant responsibility and personal involvement, and in which the applicant evaluated, handled, and resolved issues of fact and law in a dispute that involved antitrust or trade regulation law, either by reaching an adjudicated decision, or by achieving a settlement of a matter after it was the subject of substantial litigation or proceedings before an enforcement authority.

(e) Adjudicated Decision. An “adjudicated decision” on significant issues of antitrust or trade regulation law shall be defined as a decision resulting from a proceeding in which:

(1) a tribunal rendered a decision on a motion for temporary or preliminary injunction, or following an evidentiary hearing involving live testimony;

(2) a tribunal rendered a decision on a motion for summary judgment;

(3) a tribunal rendered a decision following briefing; or

(4) a tribunal or jury rendered a decision following a trial, or a court of appeals rendered a decision following an appeal. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case within a 3-year period shall be limited to 2, absent extraordinary circumstances.

Added and amended March 23, 2000 (763 So.2d 1002); amended December 5, 2003.

RULE 6-22.3 MINIMUM STANDARDS

(a) Substantial Involvement and Competence. To become certified as an antitrust and trade regulation lawyer, an applicant must demonstrate continuous and substantial involvement and competence in substantive antitrust principles and deceptive, unfair, or unconscionable acts or practices in multiple areas of commerce. Substantial involvement and competence shall be demonstrated by:

(1) *Minimum Period of Practice.* The applicant must have actually practiced law for 5 years immediately preceding the filing of the application for certification, during which the applicant was involved in at least 8 matters that substantially involved antitrust or trade regulation law.

(2) *Minimum Number of Matters.* The applicant must have handled a minimum of 8 contested matters that involved representation of a client beyond counseling during the 10 years immediately preceding application. All such matters must have substantially involved legal and factual issues, and at least 50 percent of the matters must have involved federal

antitrust law or state or federal trade regulation law. In each of these 8 matters, the applicant shall have had senior level responsibility for all or a majority of the counseling, advice, and supervision, of or involvement in: presentation of evidence, argument to the tribunal, and representation of the client. For satisfaction in whole or in part of the requirement of 8 contested matters, the antitrust and trade regulation certification committee shall consider involvement in protracted matters as separate matters on the following basis: every documented 300 hours of work on antitrust or trade regulation issues in a case shall be considered to be the equivalent of an additional matter for purposes of meeting the threshold of a minimum of 8 contested matters during the 10 years immediately preceding application. For good cause shown, for satisfaction in whole or in part of the requirement of 8 matters in which the applicant had senior level responsibility, the antitrust and trade regulation certification committee shall consider the following: (a) verified substantial involvement in matters involving antitrust law or trade regulation law at a government agency, and (b) in lieu of 2 contested matters, an applicant may submit a certificate of satisfactory completion of a nationally recognized trial advocacy course of at least a week's duration, in which the applicant's performance was, in whole or in part, recorded visually and critiqued by experienced trial lawyers.

(3) *Substantial Involvement.* The applicant shall have substantial involvement in matters involving federal antitrust, state or federal trade regulation law sufficient to demonstrate special competence as an antitrust and trade regulation lawyer. Substantial involvement may be evidenced by active participation in client interviewing, counseling, evaluating, investigating, preparing pleadings, motions, and memoranda, participating in discovery, taking testimony, briefing issues, presenting evidence, negotiating settlement, drafting and preparing settlement agreements, and/or arguing, trying, or appealing cases involving antitrust law or trade regulation law.

(b) Peer Review. The applicant shall select and submit names and addresses of at least 5 lawyers or judges, who are neither relatives nor present or former associates or partners, as references to attest to the applicant's substantial involvement in antitrust and trade regulation law, as well as the applicant's character, ethics, and reputation for professionalism. Such lawyers should be substantially involved in antitrust and trade regulation law and familiar with the applicant's practice. In addition, the antitrust and trade regulation certification committee may, at its option, send reference forms to other attorneys, judges, or officers and make such other investigation and verification as necessary.

(c) Education. The applicant shall demonstrate completion of at least 50 hours of approved continuing legal education in the field of antitrust and trade regulation law within the 3 years preceding the date of application. Accreditation of educational hours is subject to policies established by the antitrust and trade regulation certification committee or the board of legal specialization and education.

(d) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in antitrust and trade regulation law to justify representation of special competence to the legal profession and to the public. The award of an LL.M. degree from an approved law school in the area of antitrust or trade regulation law, within 8 years of application, may substitute as the written examination

required by this subdivision. Any lawyer who is certified by The Florida Bar in business litigation or civil trial law, and who meets the minimum standards of subdivisions (a)-(c) of this rule, shall be exempted from the portion (if any) of the examination requirement of this subdivision that deals with the litigation process as distinguished from substantive law.

(e) Exemption. An applicant who has been substantially involved in antitrust and trade regulation law for a minimum of 20 years, in accordance with the standards set forth in rules 6-3.5(d) and subdivision (a)(3) of this rule, shall be exempt from the examination. This exemption only shall be applicable to those applicants who apply within 4 years of the effective date of the approval of this exemption and meet all other requirements for certification.

Added and amended March 23, 2000 (763 So.2d 1002); amended December 5, 2003; amended February 17, 2006.

RULE 6-22.4 RECERTIFICATION

During the 5-year period immediately preceding application, an applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must show continuous and substantial involvement in the field of antitrust and trade regulation law. The demonstration of substantial involvement shall be made by showing that antitrust and trade regulation law comprises at least 30 percent of the applicant's practice, and that the applicant actively participated in client interviewing, counseling, evaluating, investigating, preparing pleadings, motions, and memoranda, participating in discovery, taking testimony, briefing issues, presenting evidence, negotiating settlement, drafting and preparing settlement agreements, and/or arguing, trying, or appealing cases involving antitrust or trade regulation law.

(b) Minimum Number of Matters. The applicant must have handled a minimum of 4 contested antitrust or trade regulation matters. All contested matters must have involved substantial legal or factual issues in the law of antitrust or trade regulation as determined by the certification committee. On good cause shown, for satisfaction in part of the 4 antitrust or trade regulation matters, the antitrust and trade regulation certification committee may consider involvement in protracted matters on the same basis as set forth in rule 6-22.3(a)(2).

(c) Peer Review. An applicant for recertification must submit the names and addresses of at least 3 lawyers and 1 federal or state judge or administrative law judge before whom the applicant has appeared as an advocate within the period since the last certification or recertification. Individuals used as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in antitrust and trade regulation law, as well as the applicant's character, ethics, and reputation for professionalism. Lawyers who practiced law with the applicant during the recertification period and relatives may not be used as references. The antitrust and trade regulation certification committee may, at its option, send or authorize references to other attorneys, federal or state judges, or administrative law judges.

(d) Education. The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education for antitrust and trade regulation certification, in accordance with the standards set forth in rule 6-22.3(c).

(e) Waiver of Compliance. The antitrust and trade regulation certification committee may waive compliance with subdivisions (a)-(b) of this rule for:

(1) an applicant who has been continuously certified as an antitrust and trade regulation lawyer for a period of 14 years or more; or

(2) an applicant who, since the last certification or recertification, has become an officer of any judicial system (as defined in the Code of Judicial Conduct), including an officer such as a magistrate judge or administrative law judge, or who is a member of the Federal Trade Commission (or a member of its staff), or an assistant attorney general in the Antitrust Division of the Department of Justice (or a member of his or her staff), or an assistant attorney general in the Antitrust Division of a state attorney general's office on a full-time basis during the portion of the period since the last date of certification or recertification; or

(3) good cause shown.

Added and amended March 23, 200 (763 So.2df 1002); amended by BoG August 26, 2005.

6-23. STANDARDS FOR BOARD CERTIFICATION IN LABOR AND EMPLOYMENT LAW RULE 6-23.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Labor and Employment Law." The purpose of the standards is to identify those lawyers who practice labor and employment law and who have demonstrated special knowledge, skills, and proficiency to be properly identified to the public as board certified in labor and employment law.

Added and amended effective March 23, 2000 (763 So.2d 1002). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-23.2 DEFINITIONS

(a) Labor and Employment Law. The practice of labor and employment law encompasses advice and representation concerning the application and interpretation of public and private sector labor and employment law principles, as well as employment discrimination and employment-related civil rights law. The diversity of this practice area is demonstrated by the experience requirements set forth in subdivision (c) of this rule; however, competent practice in labor and employment law requires a thorough knowledge of all legal aspects of the employment relationship, both in the private and public sector. This knowledge is particularly necessary to fulfill the counseling obligations of lawyers toward their clients. This practice area

encompasses both public and private sector collective bargaining and the state and federal laws that apply to the employment relationship including, but not limited to:

- (1) the National Labor Relations Act;
- (2) the Fair Labor Standards Act;
- (3) Florida's public sector collective bargaining laws and career service appeals;
- (4) the Employment Retirement Income Security Act;
- (5) the Family Medical Leave Act;
- (6) Title VII of the 1964 Civil Rights Act and Florida's Civil Rights Act;
- (7) the Americans With Disabilities Act;
- (8) the Occupational Safety and Health Act;
- (9) the Age Discrimination in Employment Act; and
- (10) the regulations promulgated under the above.

(b) Practice of Law. The "practice of law" for this area is defined in rule 6-3.5(c)(1).

(c) Primary Lawyer. "Primary Lawyer" includes acting as a lead lawyer during proceedings such as the taking of depositions as well as primary responsibility either as lead lawyer or lead lawyer for discrete portions of a trial or proceeding.

Added and amended effective March 23, 2000 (763 So.2d 1002); amended and effective January 26, 2018 by the Board of Governors.

RULE 6-23.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have at least 5 years of actual law practice of which at least 50 percent has been spent in active participation in labor and employment law. At least 5 years of this practice must immediately precede the application for certification. An LL.M. in the field of labor and employment law may substitute for 1 of the 5 years of law practice required.

(b) Substantial Involvement. Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement is made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

(c) Experience. The applicant must have a total of 30 days acting as the primary lawyer, judge, hearing officer, arbitrator, or mediator in litigation or administrative proceedings concerning labor and employment law issues within the 5 years immediately preceding the filing of the application for certification. Proceedings include, but are not limited to trials; evidentiary hearings; arbitrations; collective bargaining; conciliation conferences with the Equal Employment Opportunity Commission or state deferral agency; on-site inspections by the Equal Employment Opportunity Commission, Department of Labor, Occupational Safety and Health Administration, or Office of Federal Contract Compliance Programs; Fair Labor Standards Act audits conducted by the Department of Labor; and unemployment compensation appeal hearings, mediations, court hearings, taking depositions, and oral arguments. Any proceeding lasting fewer than 8 hours, but at least 4 hours, shall be credited a full day. Any proceeding lasting fewer than 4 hours, but at least 1 hour, will be credited a half day. Conducting an oral argument at a state or federal appellate court automatically entitles the applicant to 1 full day of credit, regardless of the amount of time that is allotted to the oral argument by the court. An applicant may also seek credit from the certification committee for activities not set forth above that involve labor and employment issues that are of sufficient complexity and otherwise demonstrate the applicant's labor and employment law experience. Experience credit to be awarded for any of these additional activities is at the sole discretion of the certification committee.

The following are not accepted as part of the 30-day experience requirement: attendance at scheduling and status conferences, defending depositions, preparation of pleadings, preparation of written discovery, and preparation of motions, memoranda, briefs, and position statements.

(d) Peer Review. The applicant must submit the names and addresses of 6 lawyers who are familiar with the applicant's practice, excluding lawyers who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of labor and employment law, as well as the applicant's character, ethics, and reputation for professionalism. The labor and employment law certification committee must seek at least 3 additional secondary references. At least 1 of the 6 references must be from a judge, arbitrator, mediator, or administrator before whom the applicant has appeared or practiced (or in the case of a mediator or arbitrator seeking certification, references may be from lawyers who have appeared before the applicant) within the 2 years immediately preceding the application.

(e) Education. The applicant must complete 60 credit hours of approved continuing legal education in labor and employment law during the 3-year period immediately preceding the application date. Accreditation of educational hours is subject to policies established by the labor and employment law certification committee or the board of legal specialization and education.

(f) Examination. The applicant must pass an examination applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in labor and employment law to justify the representation of special competence to the legal profession and the public. The examination will be comprehensive in scope and each applicant will be required to demonstrate at least some knowledge in each specific subject tested.

Added and amended effective March 23, 2000 (763 So.2d 1002); amended August 26, 2005; amended and effective January 26, 2018 by the Board of Governors.

RULE 6-23.4 RECERTIFICATION

Recertification is pursuant to the following standards:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in labor and employment law throughout the period since filing the last application for certification. Substantial involvement means the applicant has devoted 50 percent or more of the applicant's practice to matters in which issues of labor and employment law are significant factors and in which the applicant had substantial and direct participation in those labor and employment law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. Demonstration of this requirement is made initially through a form questionnaire approved by the labor and employment law certification committee, but written or oral supplementation may be required.

(b) Experience. The applicant must have 25 days of involvement acting as the primary lawyer, judge, hearing officer, arbitrator, or mediator in litigation or administrative proceedings concerning labor and employment law issues within the 5 years immediately preceding the filing of the application for recertification. Proceedings include, but are not limited to trials; evidentiary hearings; arbitrations; collective bargaining; conciliation conferences with the Equal Employment Opportunity Commission or state deferral agency; on-site inspections by the Equal Employment Opportunity Commission, the Department of Labor, Occupational Safety and Health Administration, or Office of Federal Contract Compliance Programs; Fair Labor Standards Act audits conducted by the Department of Labor; and unemployment compensation appeal hearings, mediations, court hearings, taking depositions, and oral arguments. Any proceeding lasting fewer than 8 hours, but at least 4 hours, will be credited as a full day. Any proceeding lasting fewer than 4 hours, but at least 1 hour, will be credited as a half day. Conducting an oral argument at a state or federal appellate court automatically entitles the applicant to 1 full day of credit, regardless of the amount of time that is allotted to the oral argument by the court. An applicant may also seek credit from the certification committee for activities not set forth above that involve labor and employment issues that are of sufficient complexity and otherwise demonstrate the applicant's labor and employment law experience. Experience credit to be awarded for any of these additional activities will be the sole discretion of the certification committee.

Direct supervision of lawyers engaged in contested matters, as defined above, may be considered in determining compliance with this requirement.

The following activities are not accepted as part of the 25-day experience requirement: attendance at scheduling and status conferences, defending depositions, preparation of pleadings, preparation of written discovery, and preparation of motions, memoranda, briefs, and position statements.

(c) Education. The applicant must complete no less than 75 hours of continuing legal education in the area of labor and employment law since filing the last application for certification. Credit for attendance at continuing legal education seminars will be given only for programs that are directly related to labor and employment law. The board of legal

specialization and education or the labor and employment law certification committee will establish policies applicable to this rule.

If the applicant has not attained 75 hours, successful passage of the examination given to new applicants for certification will satisfy this requirement.

(d) Peer Review. The applicant must submit the names and addresses of at least 3 lawyers and at least 1 judge, arbitrator, mediator, or administrator before whom the lawyer has appeared or practiced since the last application for certification. The references may not include lawyers who currently practice in the applicant's law firm. Each reference must attest to the applicant's reputation for special competence and substantial involvement in the field of labor and employment law, as well as the applicant's character, ethics, and reputation for professionalism.

(e) Waiver of Compliance. For an applicant who has been continuously certified as a labor and employment lawyer for a period of 14 years or more, the labor and employment law certification committee may waive compliance with either the experience or substantial involvement criterion for recertification, for good cause shown and provided the applicant has complied with all other requirements for recertification.

Added and amended effective March 23, 2000 (763 So.2d 1002); amended August 26, 2005; amended and effective January 26, 2018 by Board of Governors.

6-24. STANDARDS FOR BOARD CERTIFICATION IN CONSTRUCTION LAW

RULE 6-24.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Construction Law." The purpose of the standards is to identify those lawyers who practice construction law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in construction law.

Added May 20, 2004 (SC03-705). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-24.2 DEFINITIONS

(a) Construction Law. "Construction law" is the practice of law dealing with matters relating to the design and construction of improvements on private and public projects including, but not limited to, construction dispute resolution, contract negotiation, preparation, award and administration, lobbying in governmental hearings, oversight and document review, construction lending and insurance, construction licensing, and the analysis and litigation of problems arising out of the Florida Construction Lien Law, section 255.05, Florida Statutes, and the federal Miller Act, 40 U.S.C. §270.

(b) Practice of Law. The "practice of law" for this area is set out in rule 6-3.5(c)(1).

(c) Construction Law Certification Committee. The construction law certification committee shall include a minimum of 3 members with experience in transactional construction law and 3 members with experience in construction law litigation.

Added May 20, 2004 (SC03-705).

RULE 6-24.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. To become certified as a construction lawyer, a lawyer must demonstrate substantial involvement in construction law. Substantial involvement shall include the following:

(1) At least 5 years of actual practice of law of which at least 40 percent has been spent in active participation in construction law. At least 3 years of this practice shall be immediately preceding application.

(2) Substantial involvement means the applicant has devoted 40 percent or more of the applicant's practice to matters in which issues of construction law are significant factors and in which the applicant had substantial and direct participation in those construction law issues. An applicant must furnish information concerning the frequency of the applicant's work and the nature of the issues involved. For the purposes of this subdivision the "practice of law" shall be as defined in rule 6-3.5(c)(1), except that it shall also include time devoted to lecturing and/or authoring books or articles on construction law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the construction law certification committee but written or oral supplementation may be required.

(c) Peer Review. The applicant shall submit the names and addresses of 5 attorneys who are familiar with the applicant's practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's special competence and substantial involvement in the field of construction law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the construction law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as deemed appropriate.

(d) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in construction law as follows. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Credit for attendance at continuing legal education seminars shall be given only for programs

that are directly related to construction law. The education requirement may be satisfied by 1 or more of the following:

- (1) attendance at continuing legal education seminars meeting the requirements set forth above;
- (2) lecturing at, and/or serving on the steering committee of, such continuing legal education seminars;
- (3) authoring articles or books published in professional periodicals or other professional publications;
- (4) teaching courses in construction law at an approved law school or other graduate level program presented by a recognized professional education association;
- (5) completing such home study programs as may be approved by the board of legal specialization and education or the construction law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or
- (6) such other methods as may be approved by the board of legal specialization and education and the construction law certification committee.

The board of legal specialization and education and the construction law certification committee shall establish policies applicable to this rule, including, but not limited to, approval of credit hours allocable to any of the above-listed continuing legal education activities. Such policies shall provide that credit hours shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination, applied uniformly to all applicants, to demonstrate sufficient knowledge, proficiency, and experience in the practice of law applicable to the design and construction of projects in Florida construction law to justify the representation of special competence to the legal profession and the public.

Added May 20, 2004 (SC03-705).

RULE 6-24.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the certification committee, of continuous and substantial involvement in construction law throughout the period since the last date of certification. The demonstration of substantial involvement of 40 percent or more during each year after certification or prior recertification shall be made in accordance with the standards set forth in rule 6-24.3(b).

(b) Education. Completion of at least 75 hours of continuing legal education since the last application for certification (or recertification). The continuing legal education must logically be expected to enhance the proficiency of attorneys who are board certified in construction law.

(c) Peer Review. An applicant for recertification shall submit the names and addresses of 5 attorneys or judges who are familiar with the applicant's practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for special competence and substantial involvement in the field of construction law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the construction law certification committee may also make such additional inquiries as they deem appropriate.

Added May 20, 2004 (SC03-705).

6-25. STANDARDS FOR BOARD CERTIFICATION IN STATE AND FEDERAL GOVERNMENT AND ADMINISTRATIVE PRACTICE

6-25.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in State and Federal Government and Administrative Practice." The purpose of the standards is to identify those lawyers who practice law before or on behalf of state and federal government entities and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in state and federal government and administrative practice.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123). Amended and effective October 16, 2015 by Board of Governors.

6-25.2 DEFINITIONS

(a) State and Federal Government and Administrative Practice. "State and federal government and administrative practice" is the practice of law on behalf of public or private clients on matters including but not limited to rulemaking or adjudication associated with state or federal government entity actions such as contracts, licenses, orders, permits, policies, or rules. State and federal government and administrative practice also includes appearing before or presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

(b) Government Entity. "Government entity" means any state agency, political subdivision, special district, or instrumentality of the state of Florida, and any federal agency, bureau, corporation, instrumentality or other government body of the United States, including the United States armed forces. This definition should be broadly construed.

(c) Lead Advocate. "Lead advocate" means serving as the primary attorney, whether as a team leader or alone, working on behalf of either a private party or a government entity. Service

as a supervisor and signatory of legal documents, but without substantial participation in the preparation of those documents, does not constitute service as a lead advocate. Service in the role of lead advocate also includes presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

(d) Practice of Law. The “practice of law” is defined as set forth in rule 6 3.5(c)(1).

(e) State and Federal Government and Administrative Practice Certification Committee. The state and federal government and administrative practice certification committee shall include at least 2 attorneys employed by government entities in Florida, at least 1 attorney employed by a federal government entity, and at least 3 attorneys in private practice. While all committee members should have experience in rulemaking and adjudication, the committee should also include at least 2 attorneys whose state and federal government and administrative practice is primarily non-litigation.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-25.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been engaged in a state or federal government and administrative practice for at least 5 years preceding the date of application. The years of law practice need not be consecutive.

(b) Practice Requirements. The practice requirements shall be as follows:

(1) *Substantial Involvement.* The applicant must demonstrate substantial involvement in a state and federal government and administrative practice during 3 of the last 5 years immediately preceding application. Any applicant who meets the practical experience requirements in subdivisions 6 25.3(b)(2)(A)-(I) below is presumed to meet this requirement.

(2) *Practical Experience.* The applicant must demonstrate broad substantial practical experience in state or federal government and administrative practice by providing examples of service as the lead advocate on behalf of a private client or a government entity or instrumentality. Using the point values and limitations assigned below, the applicant’s experience examples from the following actions must total at least 100 points and have been performed within 20 years preceding the filing of the application:

(A) administrative hearings, involving disputed issues of material fact [Section 120.57(1), Florida Statutes] and adjudicated through final order pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (5 points each);

(B) fully-adjudicated administrative actions or rulemaking proceedings pursuant to the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-559, and other federal APA proceedings, including record review proceedings, pursuant to 5 U.S.C. §§ 701-706 (5 points each);

(C) any other fully-adjudicated state or federal administrative or civil proceeding before an administrative forum, hearing officer, magistrate, arbitrator, state or federal district, circuit or supreme court, or other forum, in which the applicant represents a party in a lawsuit brought by or against a government entity. Applicants are encouraged to identify cases involving state or federal constitutional or statutory matters, state or federal regulations, ethics, open government, public records, or sovereign immunity. Experience working on matters exclusively involving city, county, and local government law (such as code enforcement, municipal financing and licensing, local referenda, ordinances, and zoning) does not constitute practical experience for purposes of obtaining state and federal government and administrative practice certification (5 points each);

(D) rulemaking proceedings through rule adoption pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (3 points each);

(E) state or federal government or administrative actions as follows:

1. involvement in actions that are considered, pursuant to the Florida Administrative Procedure Act or the Federal Administrative Procedure Act, to provide a point of entry or otherwise create an opportunity for a person to seek to adjudicate legal rights in state or federal courts, or in an administrative forum. Examples may include, but are not limited to, policies, orders, emergency orders, permits, licenses, contracts, or other agency decisions, or intended decisions of state and federal government entities. Examples may not include documents requiring merely clerical completion (2 points each);

2. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a written settlement agreement was negotiated and upon which the proceeding was terminated (2 points each);

3. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a proposed administrative or government action or the challenge to the action was formally withdrawn (2 points each);

(F) other actions on behalf of state or federal government agencies, including military adjudicatory or rulemaking proceedings, that are the substantial equivalent of the practical experience categories identified herein, as determined at the sole discretion of the state and federal government and administrative practice certification committee after review of the application (1 to 4 points each);

(G) an advisory opinion issued by the Florida Commission on Ethics, Florida or United States Attorney General, or Supreme Court of Florida (1 point each);

(H) experience as legislative staff on a bill passed by the Florida Legislature and enacted into law within Chapters 119 (Public Records), 120 (Administrative Procedure Act), 286 (Open Meetings), or 287 (Procurement), Florida Statutes, or as staff for the Florida Legislature's Joint Administrative Procedures Committee on completed rulemaking initiatives (1 point each); or

(I) experience as judicial staff, or staff to an administrative law judge, arbitrator, hearing officer, or other administrative panel on fully-adjudicated cases consistent with this rule (1 point each).

The applicant may have a maximum of 40 points from examples within (F) through (I). If the applicant has no points within (A), (B), or (C), the applicant must have points from a minimum of 2 different categories within (D) through (I). The state and federal government and administrative practice certification committee may increase the number of points granted for activities of the type identified in subdivisions (b)(2)(A), (B), or (C), above, for good cause shown, such as an applicant's involvement as lead advocate in an administrative hearing that lasted more than 6 days.

(c) Peer Review. The applicant shall submit the names and addresses of 5 individuals, at least 4 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the 5 years immediately preceding application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years immediately preceding application. Administrative law judges or hearing officers applying for certification may offer the reference of an attorney who has appeared before them more than once, or, if appropriate, the reference of the chief administrative law judge or hearing officer. In all cases, at least 2 of the attorney references must be members of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

(d) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in state and federal government and administrative practice. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 50 hours for the 3 years immediately preceding the application for certification. Credit for attendance or speaking appearances at continuing legal education seminars shall be given only for programs that are directly related to state and federal government and administrative practice. In addition, the state and federal government and administrative practice certification committee may conclude that the education requirement is satisfied, in part, by 1 or more of the following:

(1) lecturing at continuing legal education seminars;

(2) authoring or editing articles or books published in professional periodicals or other professional publications;

(3) teaching courses directly related to state and federal government and administrative practice at an approved law school or other graduate level program presented by a recognized professional education association;

(4) completing such home study programs as may be approved by the board of legal specialization and education or the state and federal government and administrative practice certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(5) such other methods as may be approved by the board of legal specialization and education and the state and federal government and administrative practice certification committee.

The board of legal specialization and education or the state and federal government and administrative practice certification committee shall establish policies applicable to this rule including but not limited to the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such policies shall provide the hours that shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (1), (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in state and federal government and administrative practice to justify the representation of special competence to the legal profession and the public.

(f) Exemption. An applicant who has been substantially involved in state and federal government and administrative practice for a minimum of 20 years and who otherwise fulfills the standards set forth in rules 6-3.5(d) and 6-25.3(a)-(d), shall be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards and who meet all other requirements for certification.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-25.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the state and federal government and administrative practice certification committee, of continuous and substantial involvement in state and federal government and administrative practice throughout the period since the last date of certification or recertification. Any applicant who meets the practical experience and education requirements in paragraphs (b) and (c) below is presumed to meet this requirement.

(b) Practical Experience Requirement. An applicant seeking recertification must demonstrate involvement as the lead advocate on behalf of a private client or a government

entity in state and federal government and administrative practice since certification or the last recertification, totaling at least 10 points as described in rule 6-25.3(b)(2)(A)-(I). For good cause shown, subject to approval by the board of legal specialization and education and the state and federal government and administrative practice certification committee, the 10-point requirement above may be waived for applicants who possess other extraordinary legal experience related to state and federal government and administrative practice. Examples of extraordinary experience may include: service as an administrative law judge; agency general counsel or other senior government attorney with supervisory responsibilities; representation of or membership on a committee working on substantial matters of state and federal government and administrative practice; and other appropriate legal experience described by the applicant.

(c) Education. The applicant must demonstrate completion of at least 90 hours of continuing legal education since the last application for certification or recertification. The continuing legal education hours must logically be expected to enhance the proficiency of attorneys who are board certified in state and federal government and administrative practice. If the applicant has not attained 90 hours of continuing legal education but has attained more than 60 hours during such period, successful passage of the examination given to new applicants shall satisfy the continuing legal education requirements. However, an applicant seeking recertification may also reduce the educational requirements in this subsection to 60 hours by demonstrating involvement as the lead advocate on behalf of a private client or a government entity in state and federal government and administrative practice since certification or the last recertification, totaling at least 25 points as described in rule 6-25.3(b)(2)(A)-(I).

(d) Peer Review. The applicant shall submit the names and addresses of 3 individuals, at least 2 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the past 5 years preceding the application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years preceding the application. At least 1 attorney reference must be a member of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

(e) Waiver of Compliance. Any applicant for recertification who at the time of application is serving and has served full time for 3 or more years as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel is deemed to meet the recertification criteria.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-25.5 MANNER OF LISTING AREA OF CERTIFICATION

A member having received a certificate in state and federal government and administrative practice may list the area in the manner set forth under rule 6-3.9(a) or the listing may be abridged to indicate that the member is board certified in (1) state and federal government practice; or, (2) state and federal administrative practice. A member who is certified pursuant to rule 6-25.3(f) and elects to have his or her listing limited to certification in state and federal administrative practice shall have been certified with a minimum of 25 total points from examples in rule 6-25.3(b)(2)(A), (B), and (D).

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-26. STANDARDS FOR BOARD CERTIFICATION IN INTELLECTUAL PROPERTY LAW 6-26.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Intellectual Property Law.” The purpose of the standards is to identify those lawyers who practice intellectual property law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in intellectual property law.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123). Amended and effective October 16, 2015 by Board of Governors.

6-26.2 DEFINITIONS

(a) Patent Application Prosecution. “Patent application prosecution” covers the practice of law dealing with patent rights, and covers all aspects of the U. S. Patent Statutes, 35 U.S.C. §§ 1-376, as amended; the Rules of Practice in Patent Cases, 37 C.F.R. §§ 1.1 – 1.997, as amended; the American Inventors Protection Act of 1999, United States Patent and Trademark Office (USPTO) rules of practice, the Manual of Patent Examining Procedure (MPEP), the Patent Cooperation Treaty (as modified by any later court decisions or Official Gazette notices); the Assignment, Recording and Rights of Assignee, 37 C.F.R. §§ 3.1 – 3.85, as amended; the Secrecy of Certain Inventions and Licenses to Export and File Application in Foreign Countries, 37 C.F.R. §§ 5.1 – 5.33, as amended; the Register of Government Interests in Patents, 37 C.F.R. § 3.58, as amended; and Representations of Others before the USPTO, 37 C.F.R. §§ 10.1 – 10.170, as amended, as well as representing clients in proceedings before the USPTO.

(1) A “patent” is a governmental grant derived from the United States Constitution to encourage innovation and a form of protected personal property under federal statute set forth in title 35 of the United States Code that guarantees the holder of a U.S. patent a right to exclude others from making, using, offering to sell, selling, or importing an invention for a statutory period of years.

(2) “Patent matters” consist of the areas of knowledge required of attorneys registered to practice before the USPTO, including: rules, practice, and procedure; understanding how to draft claims and the ability to properly draft claims; knowledge about preparation and prosecution of patent applications based on education in and practical experience in engineering or science; understanding the application of patent laws to that endeavor; preparation of patentability opinions; filing and prosecuting patent applications, interferences, and re-issuances; preparing opinions concerning the validity and/or infringement of patents; prosecuting patent applications at the USPTO and in foreign jurisdictions; and the re-examination of patents.

(b) Patent Infringement Litigation. “Patent infringement litigation” covers the practice of law (including substantive law, evidence, and procedure) dealing with the litigation of patents in federal district courts and appeals to the federal circuit of the United States of America, and includes: Service of Process, 37 C.F.R. §§ 15.1 – 15.3; and Testimony of Employees and the Production of Documents in Legal Proceedings, 37 C.F.R. §§ 15.11 – 15.18. Infringement of a patent is a tort giving rise to a federal cause of action for a form of trespass. The grant of a patent by the USPTO carries with it the presumption of validity, including compliance with federal statutes. Invalidity is a defense to a claim for patent infringement and may be based on a number of factors, including: anticipation; obviousness; derivation; failure to disclose “best mode”; estoppel and laches; ineligible subject matter; lack of utility or operability; lack of enabling disclosure; claim indefiniteness; double patenting; inequitable conduct; violation of antitrust law; and non-infringement.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had a senior-level responsibility, and in which the applicant evaluated, handled, and resolved issues of fact and law in a dispute that involved a patent, either by reaching an adjudicated decision or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of patent law following briefing (e.g., a Markman hearing, a Daubert hearing, etc.); or a tribunal or jury rendered a decision following a trial, or the federal circuit court of appeals rendered a decision following an appeal. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(c) Trademark Law. “Trademark law” covers the practice of law dealing with all aspects of the Trademark Act of 1946 (the “Lanham Act”), as amended, 15 U.S.C. §§ 1051-1127, Trademark Counterfeiting Act of 1984, as amended, 18 U.S.C. § 2320, Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337 and 1526, Chapter 495 of the Florida Statutes, as amended (the “Florida Trademark Law”), and common law principles, including: advising clients as to ownership, registration, transfer, validity, dilution, enforceability, and infringement of trademarks in the state of Florida, the United States and internationally; representing clients in

proceedings before the USPTO and the Florida Department of State; and representing clients in proceedings in federal or state courts, or in arbitration, relating to the ownership, registration, licensing, transfer, validity, dilution, enforcement, and infringement of trademarks.

(1) A “trademark” is defined to include trademarks, service marks, certification marks, and collective marks. Each of these forms of marks shall have the meaning given in the Florida Trademark Law, Fla. Stat. § 495.011(1)-(4). A “trademark” is further defined to include trade dress as that term is used in the Restatement Third, Unfair Competition, Section 16, and domain names as that term is used in the Lanham Act, 15 U.S.C. § 1125(d).

(2) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had senior-level responsibility, and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a trademark, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(3) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of trademark law following briefing in the USPTO; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(4) “Substantive refusal” shall be defined as refusals of trademark applications during ex parte USPTO prosecution under Section 2 of the Lanham Act, 15 U.S.C. § 1052.

(d) Copyright Law. “Copyright law” covers the practice of law dealing with the protection of the works of the human intellect (literature, music, art, computer programs, etc.) under the copyright laws of the United States, including: subject matter; ownership; duration; registration; formalities; exclusive rights; transfers and licensing, including the rights and obligations of parties, appropriate terms and conditions in licensing contracts, antitrust and misuse constraints, international licensing considerations; contested matters relating to claims of infringement of copyrights and to disputes regarding the authorship, ownership, licensing, and transfer of copyrighted works, including infringement actions and defenses, remedies, jurisdiction and venue, jury considerations, federal preemption of state law; the Copyright Acts of 1909 and 1976, as amended; recent amendments to copyright law such as the Digital Millennium Copyright Act; and international aspects of copyright, including the Berne convention and other treaties on copyright and related subjects. The primary federal copyright law is contained in Title 17 of the United States Code. Generally, the practices that the copyright law is concerned with involve, but are not limited to, registration, licensing, transfer, and protection of copyrighted works.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that were adversarial, evidentiary, and binding in which the applicant had a senior-level responsibility,

and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a copyright, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter, however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(e) Practice of Law. The “practice of law” shall be defined as set forth in rule 6-3.5(c)(1) and rule 6-26.3(a).

(f) Intellectual Property Law Certification Committee. The intellectual property law certification committee shall consist of 9 members, including a minimum of 3 registered patent attorneys with experience in patent application prosecution, 2 members with experience in patent infringement litigation, 2 members with experience in trademark law, and 2 members with experience in copyright law.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-26.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law for at least 5 years immediately preceding the date of application. Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), practicing “patent application prosecution,” as defined in section 6-26.2(a), before the USPTO as a registered patent attorney or registered patent agent shall be deemed to constitute the practice of law for purposes of the 5-year practice requirement.

(b) Substantial Involvement. Substantial involvement means at least 30 percent of the applicant’s practice during the 3 years immediately preceding application has been devoted to matters involving intellectual property law.

(c) Experience. During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) *Patent Application Prosecution.* The applicant must have handled with senior-level responsibility a minimum of 40 patent matters that involved representation of a client. The quality of the applicant’s work and the nature of the issues involved shall be a factor in determining eligibility for certification. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the intellectual property law certification committee, but written or oral supplementation (including copies of work product) may be required. For good cause shown, for satisfaction in part of the 40 patent

matters that involved representation of a client, verified substantial involvement in patent matters at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) *Patent Infringement Litigation.* The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was an adjudicated decision. Additionally, applicants shall have devoted a minimum of 800 hours per year to litigation matters generally, at least 300 hours per year of which shall have been devoted to patent infringement litigation; and applicant shall have, within the last 10 years, tried a patent infringement litigation matter to the close of testimony, verdict, or judgment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in patent infringement litigation at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) *Trademark Law.* The applicant must have handled with senior-level responsibility either a minimum of 6 contested matters or 25 responses to substantive refusals, or a combination of the 2. Substantive refusals on which the applicant relies shall not have involved merely technical corrections, insignificant matters, or abandonment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. In addition, applicant must have engaged in at least 300 hours each year in the practice of law in which the applicant has had substantial senior-level participation in legal matters involving trademark law. Three contested matters involving in the aggregate no less than 50 hours of in-session hearing or trial shall satisfy the requirement of 6 contested matters. For good cause shown, for satisfaction in whole or in part of the requirement of 6 contested matters or 25 responses to substantive refusals, verified substantial involvement in a combination of contested matters and responses to substantive refusals shall be considered. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in trademark matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) *Copyright Law.* The applicant must have handled with senior-level responsibility a minimum of 40 substantive matters that involved representation of a client, with a minimum of 300 hours per year devoted to such matters. The ministerial preparation of a copyright registration is not considered a substantive matter for purposes of certification. The applicant shall submit work product samples and, if the applicant also relies upon participation in contested matters, the applicant shall submit transcripts (if available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in copyright matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(d) Peer Review. The applicant shall select and submit the names and addresses of at least 6 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other persons likely to be familiar with the applicant may be contacted as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

(e) Education. The applicant must demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for intellectual property law certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours shall be subject to policies established by the intellectual property law certification committee or the board of legal specialization and education and may be satisfied by participation in 1 or more of the following activities:

(1) attendance at continuing legal education seminars for which intellectual property law certification credit has been approved;

(2) teaching a course in intellectual property law;

(3) participation as a panelist or speaker in a symposium or similar program on intellectual property law;

(4) authorship of a book, chapter, or article on intellectual property law, published in a professional publication or journal;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the intellectual property law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the intellectual property law certification committee.

(f) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in intellectual property law sufficient to justify certification of special competence to the legal profession and the public. The examination will be comprehensive in scope and each applicant will be required to demonstrate at least some knowledge in each specific subject tested. Applicants, however, will be given the opportunity to emphasize special knowledge in 1 or more specific subject areas.

(g) Exemption. An applicant may qualify for an exemption from the examination, or a portion thereof, as follows:

(1) an applicant currently a registered patent attorney in good standing with the USPTO shall not be required to take the section(s) of the examination on topics defined in rule 6-26.2(a), but must demonstrate knowledge of substantive law pertaining to intellectual property;

(2) an applicant currently certified by The Florida Bar in civil trial or business litigation shall not be required to take the section of the examination on the litigation process, but must demonstrate knowledge of substantive law pertaining to intellectual property;

(3) an applicant who has been substantially involved in intellectual property law for a minimum of 20 years, in accordance with the standards set forth in rule 6-3.5(d), and who can demonstrate compliance with the experience requirements under rule 6-26.3(c), subdivisions (1), (2), (3), or (4) within a 10-year time frame, shall be exempt from the examination if all other requirements for certification are met. This exemption shall be applicable only to those applicants who apply by October 31, 2009.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123).

6-26.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. The applicant must show continuous and substantial involvement in matters involving intellectual property law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement shall be made by showing that intellectual property law comprises at least 30 percent of the applicant's practice.

(b) Experience. During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) *Patent Application Prosecution.* The applicant must have handled with senior-level responsibility a minimum of 30 patent matters that involved representation of a client. For good cause shown, for satisfaction in part of the 30 patent matters, the applicant may provide verified substantial involvement in patent matters at a government agency in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) *Patent Infringement Litigation.* The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was an adjudicated decision. The applicant may substitute completion of an approved, multi-day, intensive advocacy-training course where the applicant performed and was satisfactorily critiqued by recognized experts for 2 of the 5 contested matters. For good cause shown, for satisfaction in part of the 5 contested matters, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a patent, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party.

Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) *Trademark Law.* The applicant must have handled either a minimum of 4 contested matters or 15 responses to substantive refusals of the application. In addition, an applicant must have engaged in at least 300 hours each year in the practice of law in which the applicant had substantial and direct senior-level participation in legal matters involving trademark law. Two contested matters involving in the aggregate no less than 2 days of in-session hearing or trial shall satisfy the requirement of 4 contested matters. For good cause shown, for satisfaction in whole or in part of the requirements, verified substantial involvement in a combination of contested matters and responses to substantive refusals resulting in allowance in satisfaction of the minimum number of matters shall be considered. The applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a trademark, or may serve as an advocacy instructor in an intellectual property continuing legal education program, in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) *Copyright Law.* The applicant must have handled with senior-level responsibility a minimum of 30 matters that involved representation of a client. For good cause shown, for satisfaction in whole or in part of the requirement, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a copyright, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(c) **Peer Review.** The applicant must submit the names and addresses of at least 3 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism in the practice of law. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other persons likely to be familiar with the applicant may be contacted as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

(d) **Education.** The applicant must have completed at least 50 hours of approved continuing legal education in intellectual property law, in accordance with the standards set forth in rule 6-26.3(e) since the filing of the last application for certification.

Added July 6, 2006, effective August 1, 2006, (SC06 1269), (933 So.2d 1123); Amended October 3, 2008 by The Florida Bar Board of Governors, effective October 3, 2008.

6-27 STANDARDS FOR BOARD CERTIFICATION IN EDUCATION LAW

RULE 6-27.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as “Board Certified in Education Law.” The purpose of the standards is to identify those lawyers who practice in the area of education law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as board certified in education law.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-27.2 DEFINITIONS

(a) Education Law. “Education law” means the practice of law involving the legal rights, responsibilities, procedures, and practices of “educational institutions,” students, personnel employed by or on behalf of educational institutions, and the guardians and parents of students participating in education. The term “education law” shall also mean the practice of law on behalf of public or private clients in matters including, but not limited to: state, federal, and local laws, regulations, and proceedings involving student rights and student discipline; administrative law and rules regulating the operations of schools and education in Florida; charter schools; finance issues involving educational institutions, including bond indebtedness, certificates of participation, impact fees, and educational benefit districts; litigation involving educational institutions, including matters of sovereign immunity, civil rights in educational environments, including the civil rights of students and personnel in education; labor issues involving educational institutions, including standards of professional performance and practices involving personnel employed by or on behalf of educational institutions; private school contract matters and litigation involving private school entities; disability law, including § 504, Individuals With Disabilities Education Act, and the Americans With Disabilities Act; laws of general governance, including the Sunshine Law, Public Records Act, Code of Ethics for Public Officers and Officials, purchasing and bid issues; and construction, land use and development law as these areas relate to educational facilities. The purpose of education law certification is to identify lawyers who, although they may not practice substantially in each of these areas, nonetheless concentrate their practice of law in a wide variety of these categories of law in the educational environment, either on behalf of persons dealing with or receiving educational services, or as practitioners on behalf of educational institutions. “Education law” also includes presiding as an administrative law judge, arbitrator, hearing officer, judge or member of another tribunal or panel over a dispute involving education law issues.

(b) Educational Institution. “Educational institution” means any entity, private, public, for-profit or not-for-profit, that has appropriate licensure (or otherwise is legally authorized) as a provider of educational services and instruction, and is primarily devoted to the provision of education and instruction to persons of any age. Without limitation, examples of educational institutions shall be public school boards and school districts, public and private universities, community colleges, private schools, charter schools, and technical or trade schools.

(c) Lead Attorney. “Lead attorney” means one serving as the primary attorney, whether as a team leader or alone, working on behalf of either a private party or an educational institution. Service as a supervisor and signatory of legal documents, but without substantial participation in the preparation of those documents, does not constitute service as lead attorney. Service in the role of lead attorney also includes presiding as a judge, administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel hearing or presiding over a dispute involving a matter of education law.

(d) Practice of Law. “Practice of law” is defined as set forth in rule 6 3.5(c)(1).

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343).

RULE 6-27.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been engaged in the practice of education law for at least 5 years immediately preceding the date of application. Additionally, the applicant must have been a member in good standing of the bar of any state of the United States or the District of Columbia for a period of 5 years as of the date of application.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement in the practice of education law during at least 3 of the 5 years immediately preceding the date of application. An applicant who meets the practical experience requirements in subdivision (c) below is presumed to meet this requirement.

(c) Practical Experience. The applicant must demonstrate broad, substantial, practical experience in education law by providing examples of service as the lead lawyer on behalf of a private or public client involved in education law issues. Using the point values and limitations assigned below, the applicant’s examples from the following actions must total at least 50 points during the 5 years immediately preceding the date of application. Unless expressly permitted by the standard itself in the following subdivisions, an applicant may only take points under 1 subdivision for each project of work. In cases where a project is subject to points in more than 1 category, and the rule does not expressly allow for points to be earned in more than 1 category, the applicant must elect the category under which the applicant wishes to receive points for the work.

To ensure a diversity of experience and involvement in the area of education law, the applicant cannot count more than the maximum points allowable for each section.

(1) The maximum points allowable for subdivision (1) are 30 points. Each item is worth 5 points or as otherwise indicated:

(A) The applicant participated as lead lawyer in formal or informal administrative hearings in which questions or matters of education law were at issue except student suspension hearings and expulsion hearings that are not appealed to a court adjudicated through final order pursuant to the Florida Administrative Procedure Act, chapter 120, Florida Statutes. The applicant will receive an additional 3 points if the matter is appealed and the appeal is concluded by a court order or decision, or otherwise resolved

after the case is fully briefed, the applicant will earn an additional 3 points. The applicant will receive an additional 4 points if the applicant is lead attorney in rulemaking proceedings covered in subdivision (c)(2)(A).

(B) The applicant participated as lead lawyer in other fully adjudicated administrative actions (including any formal arbitration or mediation proceeding) in which questions or matters of education law were at issue including but not limited to labor/employment and rulemaking proceedings pursuant to the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-559, and any arbitration agreement or federally required proceeding, including record review proceedings, pursuant to 5 U.S.C. §§ 701-706. The applicant will receive an additional 3 points for each matter appealed and concluded by a court or fully briefed to the court before the appeal is concluded. The applicant will receive 4 points for serving as lead lawyer in rule-making proceedings as set forth in subdivision (c)(2)(A) in addition to the points available under this subdivision.

(C) The applicant participated as lead lawyer in fully adjudicated trial court proceedings in state or federal court, in which questions or matters of education law were at issue. The applicant will receive an additional 3 points for each matter appealed and concluded by a court or fully briefed to the court before the appeal is concluded.

(2) The maximum points allowable for subdivision (2) are 32 points. Each item is worth 4 points or as otherwise indicated:

(A) The applicant participated as lead lawyer in rulemaking proceedings through rule adoption pursuant to Florida Administrative Procedure Act, chapter 120, Florida Statutes, involving a question or matter of education law or a rule on behalf of an educational institution.

(B) The applicant participated as lead lawyer in administrative litigation, state or federal court litigation and arbitration resulting in settlement before final adjudication in which substantial questions or issues of education law were presented.

(C) The applicant conducted appeals as lead lawyer in which the applicant either represented an educational institution or a party seeking relief against an educational institution on a question involving education law. Appellate matters that are settled on appeal are included, but only if the applicant as lead lawyer filed at least 1 substantive brief in the appeal, including the appeal of student disciplinary matters pursuant to §120.68, Florida Statutes.

(D) The applicant participated as lead lawyer in complaints in which the applicant prepared a response to, provided services in the investigation of, or negotiated resolution of, complaints filed with state or federal government agencies such as the Equal Employment Opportunity Commission, Office for Civil Rights, or Florida Department of Education.

(3) The maximum points allowable for subdivision (3) are 30 points. Each item is worth 3 points or as otherwise indicated:

(A) The applicant participated in student disciplinary hearings as a hearing officer or as lead lawyer before a hearing officer or an educational institution which were not appealed.

(B) The applicant sought and obtained an advisory opinion from the Florida Commission on Ethics, Florida or United States Attorney General, or the Florida or United States Department of Education, or any constituent division of those entities on behalf of an educational institution as lead lawyer.

(C) The applicant appeared as lead lawyer for a party or an educational institution before any governmental organization in a formal public meeting (Sunshine Meeting under § 286.011, Florida Statutes), including an appearance before an educational institution as lead lawyer for that entity, involving a question of education law. The applicant will receive points for appearing as lead lawyer representing an educational institution before a local government or the Florida Department of Community Affairs on matters involving land use planning or zoning issues, appearing before a governmental entity or agency to advocate a matter of interest to a public or private client involving a question of education law or a matter of interest to an educational institution, or any other formal appearances before regulatory bodies and authorities involving a question of education law or matters of concern to an educational institution. This subdivision does not apply and the applicant will not receive points when this appearance is in connection with another matter covered by another subdivision or practice for which points are awardable such as appearing before an educational institution in an executive session to discuss pending litigation for which points are awarded under subdivision (c)(1)(C), or appearing in connection with a disciplinary hearing for which points are awardable under subdivision (c)(3)(A).

(D) The applicant participated as a registered lobbyist in support of a rule or law before any governmental authority on a regulation or law involving education, education law, or a matter of concern to an educational institution. Each law or regulation for which the applicant has advocated before an authority constitutes a separate matter of experience for accumulation of these points.

(E) The applicant conducted an investigation as lead lawyer on behalf of an educational institution or represented a party being investigated during an investigation conducted by or on behalf of an educational institution. This includes all internal review procedures and work related to issues involving scientific misconduct, plagiarism, breach of test security, Institutional Review Board meetings, tenure, dismissal from or sanction of employment, and advising managerial staff or the governing body of an educational institution regarding these matters. Likewise, points in this category are awarded for each client involved in any of these types of matters in which the client is or may be adverse to an educational institution.

(F) The applicant served as lead lawyer in an attempt to resolve a matter involving educational law as defined in rule 6-27.2(a), through mediation or other negotiations, prior to the matter being filed in an administrative or judicial tribunal.

(G) The applicant performed internal audits for an educational institution including, but not limited to, assessing wage hour compliance and handbook review.

(4) The maximum points allowable for subdivision (4) are 30 points. Each item is worth 2 points or as otherwise indicated:

(A) Two points will be awarded for each of the following actions on behalf of a client or educational institution involving a question of education law, to the extent the work is not covered by or included in the work under another subdivision of these standards: preparation of an opinion letter regarding a question or matter of education law; preparation of a contract involving educational services, technology, or other matters that will facilitate or allow for the delivery of educational services, or in which an educational institution is a party; preparation of rules of procedure on behalf of an educational institution; the evaluation of a charter school application; the presentation of training addressing an education law topic delivered to district or university staff or lawyers in which continuing legal education credit is awarded to the speaker or attendees; service as legal advisor to the negotiating team of an educational institution through completion of a collective bargaining agreement; or other miscellaneous activities performed as lead lawyer on a discrete and describable education law matter for an educational institution or party and which the committee determines reflects substantial involvement in the practice of education law.

(d) Verification of Practical Experience Requirements. The education law certification committee will develop an application form to elicit specific information sufficient to verify the practical experience reported by the applicant. The application will require the applicant to identify case numbers for court and administrative litigation, parties in litigation (using initials with respect to student-identifying matters), the nature of the work performed, the dates on which the work was performed (or a period of time during which it was performed), the identity of any court or tribunal before which the work was performed, the results of the work, and the identity of any opposing lawyer, and any other information the education law certification committee determines is reasonably required for the applicant to submit so that the practice requirements may be verified, subject to the requirement of confidentiality.

(e) Additional Points. The education law certification committee or the board of legal specialization and education may increase the number of points granted for activities of the type identified in subdivisions (c)(1)-(2), for good cause shown, such as the significant impact of a particular case on a question of education law.

(f) Peer Review. The applicant must submit the names and addresses of 5 individuals, at least 4 of whom are lawyers and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the past 5 years preceding the date of application. In lieu of a judicial reference, the applicant may provide the name and address of the head of an educational institution (or a member of a collegiate body that serves as the head of the educational institution) if the applicant has advised or appeared before that person within the 5-year period preceding the date of application. The lawyer references must be members of The Florida Bar, and may not be persons who practice currently in the applicant's law firm nor employed in the same law department at the same educational institution as the applicant at the

time the application is filed. Individuals serving as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of education law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the education law certification committee may authorize references from persons other than lawyers and may also make additional inquiries to determine the qualifications of an applicant for certification under this rule and rule 6-3.5(c)(6).

(g) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in education law during the 3-year period immediately preceding the date of application. Credit for attendance or speaking appearances at continuing legal education seminars will be given only for programs that are directly related to education law, including but not limited to, continuing legal education in the areas of civil rights; disability law; legal issues relevant to the governance and operations of educational institutions, including Sunshine law, public records law, and Code of Ethics; government procurement law (including bid protests); government finance; trial practice; administrative law; and labor and employment law. Additionally, the education law certification committee may conclude that the education requirement is satisfied in part by 1 or more of the following:

- (1) lecturing at or serving on the steering committee of continuing legal education seminars;
- (2) authoring or editing articles or books published in professional periodicals or other professional publications on questions of education law;
- (3) teaching courses related to education law at an approved law school or other graduate level program presented by a recognized professional education association;
- (4) completing a home study program approved by the board of legal specialization and education or the education law certification committee subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study; or
- (5) other methods approved by the board of legal specialization and education and the education law certification committee.

The board of legal specialization and education or the education law certification committee must establish standards applicable to this rule, including but not limited to the method of establishing the credit hours applicable to any of the above listed subdivisions.

(h) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, experience, and professionalism in education law to justify the representation of special competence in education law to the legal profession and the public.

(i) Exemption. An applicant who has been substantially involved in education law for a minimum of 20 years and who otherwise fulfills the standards set forth in rules 6-3.5(d) and rules 6-27.3(a)-(g), are exempt from the examination. This exemption is only applicable to those

applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 6, 2017 by Board of Governors.

RULE 6-27.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in education law throughout the period since the last date of certification or recertification. An applicant who meets the practical experience and education requirements in (b) below shall be presumed to meet this requirement.

(b) Practical Experience Requirement. The applicant must demonstrate involvement as lead attorney on behalf of a private client or educational institution in matters totaling at least 10 points as described in rule 6-27.3(c) above. For good cause shown and at the discretion of the education law certification committee, the 10-point requirement may be waived for applicants who possess other extraordinary legal experience related to matters of education law. Examples of such extraordinary experience may include service as an administrative law judge, general counsel responsibility for an educational institution or other senior attorney experience with supervisory responsibilities on behalf of an educational institution, representation of or membership on a committee working on substantial matters of education law, teaching education law at the college level, and other appropriate legal experience described by the applicant and approved by the education law certification committee.

(c) Education. The applicant must demonstrate completion of at least 90 credit hours of approved continuing legal education for education law certification. If the applicant has not attained 90 credit hours of approved continuing legal education for education law certification, but has attained more than 60 hours during such period, successful passage of the examination given to new applicants will satisfy the education requirements. However, an applicant seeking recertification may also reduce the educational requirements in this subdivision to 60 hours by demonstrating involvement as lead attorney on behalf of a private client or an educational institution in matters of education law since certification or the last recertification, totaling at least 25 points as described in rule 6-27.3(c) above.

(d) Peer Review. The applicant must submit the names and addresses of 3 individuals, at least 2 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared during the 5-year period immediately preceding the date of application. In lieu of a judicial reference the applicant may provide the name and address of the head of an educational institution (or a member of a collegiate body that serves as the head of the educational institution) under circumstances where the applicant has advised or appeared before such person within the 5-year period immediately preceding the date of application. The attorney references must be members of The Florida Bar in good standing, and may not be members of the applicant's law firm or, if the applicant is employed by an educational

institution, the references may not be employed in the same law department at the same educational institution as the applicant at the time the application is filed. Individuals serving as references must be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of education law, as well as the applicant's character, ethics, and reputation for professionalism. The board of legal specialization and education and the education law certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for recertification pursuant to this rule and rule 6-3.5(c)(6).

(e) Waiver of Compliance. An applicant for recertification who, at the time of application is serving and has served full time for 3 or more years as an administrative law judge, is deemed to meet the recertification criteria in subdivisions 6-27.4(a) and (b).

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343).

6-28. STANDARDS FOR BOARD CERTIFICATION IN ADOPTION LAW

RULE 6-28.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Adoption Law." The purpose of the standards is to identify those lawyers who practice adoption law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in adoption law.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343). Amended and effective October 16, 2015 by Board of Governors.

RULE 6-28.2 DEFINITIONS

(a) Adoption Law. "Adoption law" is the practice of law dealing with the complexities and legalities of interstate and intrastate adoption placements, including civil controversies arising from termination of the biological parents' parental rights, the Indian Child Welfare Act, and interstate placements. In addition to the actual adoption placement, "adoption law" includes evaluating, handling, and resolving such controversies prior to the placement of a child for adoption and all post placement proceedings. The practice of adoption law in the state of Florida is generally unique in that decisional, statutory, and procedural laws are specific to this state.

(b) Practice of Law. "Practice of law" for this area is defined as set forth in rule 6-3.5(c)(1).

(c) Adoption placements. "Adoption Placements" for the purpose of these rules of the adoption law certification standards, describes the process of surrendering a child for adoption and creating a legal parental relationship between the child and non-relative adoptive parents within the meaning and intent of Florida Statutes.

(d) Contested Adoption Proceedings. “Contested adoption proceedings” for the purpose of these rules the adoption law certification standards, occurs when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgement. The proceeding must occur prior to or subsequent to entry of a final judgment of termination of parental rights in furtherance of adoption, a contested stepparent or relative adoption judgment or an order granting or denying intervention.

(e) Adoption Appeal. “Adoption appeal” for the purpose of these rules of the adoption law certification standards, is any appeal of an issue arising under the Florida Adoption Act, whether the issue was presented pre-or-post finalization of the adoption.

(f) Substantial Involvement. The applicant must demonstrate, within the 5-year period immediately preceding the date of application, substantial involvement in the placement of minor children for adoption sufficient to demonstrate special competence as an adoption lawyer.

(1) *Adoption Placement.* Substantial involvement in adoption placement includes active participation in interviewing and counseling adoptive parents, providing full disclosure to adoptive parents regarding applicable law and the subject minor child, providing legally mandated disclosure to biological and legal parents, investigating issues necessary to assure a legally stable adoption placement, preparation of pleadings, providing notice to individuals legally entitle to notice, taking consents for adoption, presentation of evidence in termination of parental rights and adoption proceedings, attendance at hearings, preparation of interstate adoption documentation, and drafting and preparation of post-placement communication agreements, and authorizing payment of living and medical expenses.

(2) *Contested Adoption Proceedings or Adoption Appeals.* Substantial involvement in a contested adoption proceeding or adoption appeal requires that the applicant demonstrate responsibility for at least 50 percent of the legal work in preparing and presenting the case for any trial, appeal or evidentiary hearing for disposition by the trier of fact.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343);amended and effective May 20, 2016 by The Florida Bar Board of Governors.

RULE 6-28.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have at least 5 years of the actual practice of law, of which at least 40 percent has been spent in active participation in adoption law.

(b) Substantial Involvement. The applicant must have continuous and substantial involvement in the field of adoption law. The demonstration of substantial involvement must be made in accordance with this subchapter.

(c) Minimum Number of Cases. The applicant must have had substantial involvement in adoption law cases as follows:

(1) *Adoption Placements.* The applicant must have either presided over as a judge or general magistrate, or handled as an advocate, a minimum of 50 adoption placements in which the applicant was substantially involved as defined in this subchapter. All placements must have involved the placement of a minor child with an adoptive family who is not related to the child within the third degree of consanguinity or is not the minor child's stepparent.

(A) In each of these 50 adoption placements, the applicant must have appeared before the court as the adoption entity, as defined in the Florida Adoption Act, on behalf of the adoptive parents or as the lawyer for the adoption entity.

(B) In each of these 50 adoption placements, the applicant must have been responsible for at least 50% of the legal decisions concerning the minor child's adoption placement, termination of the biological and legal parents' parental rights, and finalization of the adoption.

(C) Adoption Placements and legal proceedings simultaneously undertaken with respect to the same child or sibling group will be deemed collectively as one adoption placement,

(D) Adoption Placements will not include:

(i) the domestication of intercountry adoptions;

(ii) the termination of parental rights under Chapter 39, Florida Statutes; or

(iii) the finalization of an adoption where the applicant was not substantially involved in the placement of the child as set forth in this subchapter or the termination of parental rights under the Florida Adoption Act.

(2) *Contested Adoption Proceedings or Adoption Appeals.* If the applicant does not meet the minimum requirement of 50 adoption placements, the applicant must demonstrate substantial involvement, as defined in this subchapter, in a minimum of 15 contested adoption proceedings or adoption appeals within the 5 years immediately preceding the date of the application. In each of the 15 contested adoption proceedings or adoption appeals, the applicant must demonstrate responsibility for at least 50% of the legal work in preparing and presenting the case when a contested adoption proceeding or adoption appeal meets the following requirements:

(A) *Contested Adoption Proceedings.* Contested adoption proceedings occur when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgement. An eligible contested adoption is any adoption proceeding, including but not limited to: a private adoption placement, a contested stepparent or relative adoption, or a proceeding in which the court grants or denies intervention. Contested adoption proceedings are eligible for consideration when:

(i) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement as defined in this subchapter and the ultimate issues are submitted to the trier of fact for final resolution;

(ii) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement and the ultimate issues are resolved with a mediator or by the parties prior to the issues being submitted to the trier of fact for final resolution; or

(iii) the proceeding involves extraordinary, complex contested litigation in which the applicant has substantial involvement and the ultimate issues are resolved with a mediator or by the parties prior to an adversarial evidentiary hearing or trial.

(B) **Adoption Appeal.** An adoption appeal is any appeal arising under the Florida Adoption Act, whether the issue was presented pre- or post-finalization of the adoption. An adoption appeal is only eligible for consideration when the applicant establishes that the applicant was responsible for a majority of the legal decisions in each matter, including the filing of principal briefs in an appellate case or the filing of petitions or responses in extraordinary writ cases. In all cases, the applicant must specifically identify any co-counsel and demonstrate that the applicant's level of participation was substantial and direct. In support of the application requesting credit for an adoption appeal, the applicant will submit each brief and appropriately redact all identifying information regarding birth and adoptive families. In each of these 15 contested adoption appeals, the applicant must have been responsible for all or at least 50% of the legal decisions in each case. A brief, including an amicus brief, written for different appellate levels (i.e. district court, Supreme Court of Florida and federal courts) may be submitted as a separate appellate case handled by the applicant, but cases arising from a single proceeding may not be counted more than twice. Briefs written for different appellate levels must be substantially different in order to be counted twice.

(3) *Application Requirements.* The applicant meets the substantial involvement requirements by submitting proof of 50 adoption placements or 15 contested adoption proceedings/appeals as required in the adoption law certification standards; or the applicant may submit an application detailing substantial involvement in a combination of adoption placements and contested adoption proceedings/appeals to be considered by the committee as follows:

(A) Each adoption placement, contested adoption proceeding or appeal will be assigned points as set forth below. The applicant must submit a minimum of 100 points for review. Points will be awarded as follows:

(i) Each adoption placement as defined in this subchapter will be assigned 2 points.

(ii) Each contested adoption proceeding as defined in this subchapter will be assigned 6 points.

(iii) Each adoption appeal as defined in this subchapter will be assigned 6 points.

(B) The point system in this subchapter will be used solely to determine whether an applicant has met the minimum combination number of cases.

(C) Cases that involve the same child or sibling group will not be considered for more than 1 adoption placement, contested proceeding or appeal (adoption matter). For good cause shown, the applicant may count cases as 2 adoption matters if the applicant meets the separate substantial involvement requirements for each event. No case involving the same child or sibling group will be counted as more than 2 adoption matters.

(4) *Time.* All qualified adoption placements and contested adoption proceedings must conclude within the required 5-year period, except that an adoption appeal may qualify for consideration after submission of a written brief to the appellate court.

(5) *Guardian Ad Litem.* Service as a guardian ad litem, standing alone, will not constitute substantial involvement.

(d) Education. The applicant must demonstrate completion of at least 30 credit hours of approved continuing legal education in the field of adoption law during the 3-year period immediately preceding the date of application. Accreditation of educational hours are subject to policies established by the adoption law certification committee or the board of legal specialization.

(e) Peer Review.

(1) The applicant must select and submit names and addresses of 6 lawyers, who neither are relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism. At least 3 of the lawyers must be members of The Florida Bar, with their principal office located in the state of Florida. These lawyers must be involved in adoption law and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of 2 judges before whom the applicant has appeared on adoption matters within the 2-year period immediately preceding the date of application to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The adoption law certification committee may, at its option, send reference forms to other lawyers and judges.

(f) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, experience, and professionalism in adoption law to justify the representation of special competence to the legal profession and the public.

RULE 6-28.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must demonstrate satisfaction of the following requirements for recertification:

(a) Substantial Involvement. The applicant must have continuous and substantial involvement in the field of adoption law. The applicant must have devoted at least 40 percent of the applicant's practice to adoption law. The demonstration of substantial involvement shall be made in accordance with this subchapter.

(b) Minimum Number of Cases. The applicant must have had substantial involvement in adoption law cases as follows:

(1) *Adoption Placements.* The applicant must have either presided over as a judge or general magistrate, or handled as an advocate, a minimum of 30 adoption placements in which the applicant was substantially involved as defined in this subchapter. All placements must have involved the placement of a minor child with an adoptive family who is not related to the child within the third degree of consanguinity or is not the minor child's stepparent.

(A) In each of these 30 adoption placements the applicant must have appeared before the court as the adoption entity, as defined in the Florida Adoption Act, on behalf of the adoptive parents or as the lawyer for the adoption entity.

(B) In each of these 30 adoption placements, the applicant must have been responsible for all or at least 50% of the legal decisions concerning the minor child's adoption placement, termination of the biological and legal parents' parental rights, and finalization of the adoption.

(C) Adoption placements and legal proceedings simultaneously undertaken with respect to the same child or sibling group will be deemed collectively as one adoption placement.

(D) Adoption placements will not include:

(i) the domestication of intercountry adoptions;

(ii) the termination of parental rights under Chapter 39, Florida Statutes; or

(iii) the finalization of an adoption where the applicant was not substantially involved in the placement of the child as set forth in this subchapter or the termination of parental rights under the Florida Adoption Act.

(2) *Contested Adoption Proceedings or Adoption Appeals.* If the applicant does not meet the minimum requirement of 30 adoption placements, the applicant must demonstrate

substantial involvement, as defined in this subchapter, in a minimum of 10 contested adoption proceedings or adoption appeals within the 5 years immediately preceding the date of application. In each of these 10 contested adoption proceedings or adoption appeals, the applicant must demonstrate responsibility for at least 50% of the legal work in preparing and presenting the case when a contested adoption proceeding or adoption appeal meets the following requirements:

(A) Contested Adoption Proceedings. Contested adoption proceedings occur when a litigant contests a proceeding under the Florida Adoption Act to terminate parental rights in furtherance of adoption or an adoption judgment. An eligible contested adoption is any adoption proceeding, including but not limited to: a private adoption placement, a contested stepparent or relative adoption, or a proceeding in which the court grants or denies intervention. Contested adoption proceedings are eligible for consideration when:

(i) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement as defined in this subchapter, and the ultimate issues are submitted to the trier of fact for final resolution;

(ii) the proceeding includes an adversarial evidentiary hearing or trial in which the applicant has substantial involvement, and the ultimate issues are resolved with a mediator or by the parties prior to the issues being submitted to the trier of fact for final resolution; or

(iii) The proceeding involves extraordinary, complex contested litigation in which the applicant has substantial involvement, and the ultimate issues are resolved with a mediator or by the parties prior to an adversarial evidentiary hearing or trial.

(B) Adoption Appeal. An adoption appeal is any appeal arising under the Florida Adoption Act, whether the issue was presented pre- or post-finalization of the adoption. An adoption appeal is only eligible for consideration when the applicant establishes that the applicant was responsible for a majority of the legal decisions in each matter, including the filing of principal briefs in an appellate case or the filing of petitions or responses in extraordinary writ cases. In all cases, the applicant must specifically identify any co-counsel and demonstrate that the applicant's level of participation was substantial and direct. In support of the application requesting credit for an adoption appeal, the applicant will submit each brief and appropriately redact all identifying information regarding birth and adoptive families. In each of these 10 contested adoption appeals, the applicant must have been responsible for all or at least 50% of the legal decisions in each case. A brief, including an amicus brief, written for different appellate levels (i.e. district court, Supreme Court of Florida and federal courts) may be submitted as a separate appellate case handled by the applicant, but cases arising from a single proceeding may not be counted more than twice. Briefs written for different appellate levels must be substantially different in order to be counted twice.

(3) *Application Requirements.* The applicant meets the substantial involvement requirements by submitting proof of 30 adoption placements or 10 contested adoption proceedings/appeals as required in the adoption law certification standards; or the applicant may submit an application detailing his or her substantial involvement in a combination of adoption placements and contested adoption proceedings/appeals to be considered by the committee as follows:

(A) Each adoption placement, contested adoption proceeding or appeal will be assigned points as set forth below. The applicant must submit a minimum of 60 points for review. Points will be awarded as follows:

(i) Each adoption placement as defined in this subchapter will be assigned 2 points.

(ii) Each contested adoption proceeding as defined in this subchapter will be assigned 6 points.

(iii) Each adoption appeal as defined in this subchapter will be assigned 6 points.

(B) The point system in this subchapter rule will be used solely to determine whether an applicant has met the minimum combination number of cases.

(C) Cases that involve the same child or sibling group will not be considered for more than 1 adoption placement, contested proceeding or appeal (adoption matter). For good cause shown, the applicant may count cases as 2 adoption matters if the applicant meets the separate substantial involvement requirements for each event. No case involving the same child or sibling group will be counted as more than 2 adoption matters.

(4) *Time.* All qualified adoption placements and contested adoption proceedings must conclude within the required 5-year period, except that an adoption appeal may qualify for consideration after submission of a written brief to the appellate court.

(5) *Guardian Ad Litem.* Service as a guardian ad litem, standing alone, will not constitute substantial involvement.

(6) *Waiver.* The adoption law certification committee may waive the minimum number of cases for an applicant who has been continuously board certified in adoption law under these standards for a period of 14 years or more.

(c) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in the field of adoption law. The continuing legal education must enhance the proficiency of lawyers who are board certified adoption lawyers.

(d) Peer Review.

(1) The applicant must submit the names and addresses of 3 lawyers, who neither are relatives nor current associates or partners, as references to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must be involved in adoption law and familiar with the applicant's practice.

(2) The applicant must submit the names and addresses of at least 2 judges before whom the applicant has appeared on adoption matters within the 2-year period immediately preceding the date of application to attest to the applicant's substantial involvement and competence in adoption law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The adoption law certification committee may, at its option, send reference forms to other lawyers and judges.

New subchapter added June 11, 2009, (SC08-1981), (11 So.3d 343); amended and effective May 20, 2016 by The Florida Bar Board of Governors.

6-29. STANDARDS FOR BOARD CERTIFICATION IN JUVENILE LAW

RULE 6-29.1 GENERALLY

A lawyer who is an active member in good standing of The Florida Bar and who meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in Juvenile Law." The purpose of the standards is to identify those lawyers who practice juvenile law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in juvenile law.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 6-29.2 DEFINITIONS

(a) Juvenile Law. "Juvenile law" is the area of law that inherently and directly impacts children. It includes, but is not limited to, dependency, delinquency, and termination of parental rights matters. It does not include adoption matters or matters arising in the context of family law proceedings not consolidated with dependency or termination of parental rights matters.

(b) Trial. A "trial" is defined as substantially preparing a case for court, offering testimony or evidence, or cross-examination of witness(es), in an adversarial proceeding before a trier of fact, and submission of a case to the trier of fact for determination of the matter.

(c) Appellate proceeding. An "appellate proceeding" is defined as an action in a state or federal court seeking review of a decision of a lower tribunal.

(d) Practice of Law. The "practice of law" for this area is defined in rule 6-3.5(c)(1).

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 6-29.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been substantially engaged in the practice of law for at least 5 years immediately preceding the application date.

(b) Practice Requirements. The practice requirements are as follows:

(1) *Substantial Involvement.* The applicant must demonstrate substantial involvement in the practice of juvenile law during 3 of the last 5 years, immediately preceding application.

(2) *Practical Experience.* The applicant must demonstrate substantial practical experience in juvenile law by providing examples of service as the lead advocate on behalf of a governmental entity, a child, a parent, a guardian, a foster parent, or a child's relative with standing to litigate, in a minimum of 20 fully adjudicated trials or appellate proceedings arising from petitions for dependency, termination of parental rights, or delinquency. If at least 10 of the trials or appeals required by this provision occurred during the 5 years immediately preceding application, the requirements of rule 6-29.3(b)(1) are met.

(3) *Other Experience.* On good cause shown, the juvenile law certification committee may substitute other experience in juvenile law as defined for the portion of the trials or appellate proceedings as it deems appropriate. This experience may include, but is not limited to:

(A) handling school issues, including disciplinary issues and educational planning matters, participating in placement determinations, and the development of treatment and alternative plans;

(B) dealing with matters relating to governmental benefits;

(C) advocacy after termination of parental rights;

(D) advocacy before the Florida Department of Children and Families or other agencies;

(E) advocacy in juvenile delinquency matters other than trial or appellate proceedings;

(F) representation at administrative proceedings; and

(G) resolving health care matters.

(c) Peer Review.

(1) The applicant must submit the names and addresses of 6 lawyers, who are neither relatives nor current associates or partners nor who practice in the same governmental entity as the applicant. At least 4 of the references must be members of The Florida Bar. Individuals serving as references must have experience in juvenile law and be sufficiently

familiar with the applicant to attest to the applicant's special competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law.

(2) The applicant must submit the name and address of 1 judge before whom the applicant has appeared in a juvenile law matter within the 5-year period immediately preceding application to attest to the applicant's competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The board of legal specialization and education and the juvenile law certification committee may authorize references from persons other than lawyers and may also make additional inquiries it deems appropriate to determine the applicant's qualifications for certification.

(d) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in juvenile law during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the juvenile law certification committee or the board of legal specialization and education.

(e) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, proficiency, experience, and professionalism in juvenile law to justify the representation of special competence to the legal profession and the public.

(f) Exemption. An applicant who meets the standards set forth in subdivisions (a) - (d) of this rule and those of rule 6-3.5(d) are exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 6-29.4 RECERTIFICATION

During the 5-year period immediately preceding application, an applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in juvenile law throughout the period since the last date of certification or recertification.

(b) Trials or Appellate Actions. The applicant must have had sole or primary responsibility in at least 10 trials or appellate actions involving juvenile law. When primary responsibility is used to meet this requirement, the applicant must specifically identify any co-counsel and demonstrate to the satisfaction of the juvenile law certification committee that the applicant's level of participation was substantial and direct. On good cause shown, the juvenile law certification committee may substitute other experience for any portion of the trials or appellate proceedings it deems appropriate. This experience may include, but is not limited to,

the matters set forth in Rule 6-29.3(b)(3). Compliance with this provision constitutes a prima facie showing of compliance with the requirements of rule 6-29.4(a).

(c) Education. The applicant must demonstrate completion of at least 50 credit hours of approved continuing legal education in juvenile law certification. Accreditation of educational hours is subject to policies established by the juvenile law certification committee or the board of legal specialization and education.

(d) Peer Review.

(1) The applicant must submit the names and address of at least 4 lawyers who are neither relatives nor current associates or partners nor who practice in the same governmental entity as the applicant, as references to attest to the applicant's substantial involvement and competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism. These lawyers must have experience in juvenile law and be familiar with the applicant's practice.

(2) The applicant must submit the name and address of at least 1 judge before whom the applicant has appeared within the last 5 years to attest to the applicant's competence in juvenile law, as well as the applicant's character, ethics, and reputation for professionalism.

(3) The juvenile law certification committee may, at its option, send reference forms to other lawyers and judges, as well as any other person the committee deems appropriate.

New subchapter added May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

**6-30 STANDARDS FOR BOARD CERTIFICATION IN CONDOMINIUM AND
PLANNED DEVELOPMENT LAW
RULE 6-30.1 GENERALLY**

A lawyer who is an active member in good standing of The Florida Bar and meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in Condominium and Planned Development Law." The purpose of the standards is to identify lawyers who:

(a) practice law in the development of common interest real property, and the formation, representation, and regulation of community associations;

(b) have the special knowledge, skills, and proficiency; and

(c) the character, ethics, and reputation for professionalism to be identified to the public as board certified in condominium and planned development law.

New subchapter added January 21, 2016; effective March 21, 2016.

RULE 6-30.2 DEFINITIONS

(a) Community Association and Planned Development. A “community association” is a corporation for profit or not-for-profit that is engaged in the management and operation of common interest real property, which typically includes:

- (1) associations for condominiums, homeowners, property owners, and mobile homes;
- (2) associations governing communities or properties which may be related to residential, commercial, other non-residential communities or properties;
- (3) cooperatives;
- (4) recreational organizations such as golf or tennis clubs; and
- (5) voluntary organizations that are incorporated or not incorporated.

A “planned development” is real property in Florida that consists of or will consist of separately owned areas, lots, parcels, units, or interests together with common or shared elements or interests in real property, or where the separately owned areas, lots, parcels, units, or interests are subject to common restrictive covenants or are governed by a community association.

(b) Condominium and Planned Development Law. “Condominium and planned development law” is the practice of law that involves:

- (1) serving as counsel to community associations, property owners, community association members, sellers, purchasers, developers, lenders, governmental agencies, and investors in matters related to community associations and planned developments;
- (2) drafting governing documents or their amendments, and preparing filings with governmental agencies that regulate community associations or planned developments;
- (3) serving in or for governmental agencies which regulate community associations or planned developments;
- (4) representing parties in construction lien and defect claims, collection of assessment actions, governing document and community association statutory enforcement and dispute actions, and other litigation, arbitration, and mediation in matters relating to community associations or planned developments; and
- (5) planning, development, construction, and financing of condominium or planned development communities.

(c) Practice of Law. The “practice of law” for this area is set out in rule 6-3.5(c)(1).

New subchapter added January 21, 2016; effective March 21, 2016.

RULE 6-30.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been engaged in the practice of condominium and planned development law for at least 5 years immediately preceding the date of application.

(b) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 40 percent has been spent in active participation in condominium and planned development law during at least 3 of the 5 years immediately preceding the date of application.

(c) Practical Experience. The applicant must demonstrate substantial practical experience in condominium and planned development law by providing examples of at least 20 substantive tasks or services performed on behalf of, or in connection with, community associations and planned developments, such as:

- (1) drafting, reviewing, interpreting, or revising development and governing documents, title instruments and reports, title insurance policies, contracts for sale and purchase, and statutory and administrative laws, rules, and provisions;
- (2) drafting financing instruments for developers, lenders, investors, or community associations;
- (3) planning and drafting project legal structures and entities;
- (4) dealing with development funds and associated development documents;
- (5) drafting other project related documents;
- (6) serving as an arbitrator or counsel for a party in an arbitration;
- (7) serving as a mediator or counsel for a party in a mediation;
- (8) drafting opinion letters;
- (9) serving as legal counsel at a trial, on appeal, or in administrative hearings;
- (10) representing owners, purchasers, developers, lenders, investors, community associations, governmental agencies, or political subdivisions in matters relating to condominium and planned development law; or
- (11) any other activity deemed appropriate by the condominium and planned development law certification committee.

The applicant must also describe, through examples or narrative, the applicant's law practice of representing community associations, developers, lenders, investors, or owners in matters involving condominium and planned development law during the 5-year period preceding the date of application. The examples or narrative must include the approximate number and type of

clients the applicant has represented during the 5-year period. Consideration will be given to applicants who have served as in-house counsel or who have been employed by governmental agencies.

(d) Peer Review. The applicant must submit the names and addresses of 5 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in condominium and planned development law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 4 of the 5 references must be lawyers or judges and at least 3 of the lawyer references must be members of The Florida Bar. The condominium and planned development law certification committee may, at its option, send reference forms to other lawyers and judges.

(e) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in condominium and planned development law during the 3-year period immediately preceding the date of application. Accreditation of educational hours is subject to policies established by the condominium and planned development law certification committee or the board of legal specialization and education.

(f) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, and experience in condominium and planned development law to justify the representation of special competence to the legal profession and the public.

(g) Exemption. An applicant who has been substantially involved in condominium and planned development law for a minimum of 20 years, and who otherwise fulfills the standards under rule 6-30.3(c)–(e), will be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added January 21, 2016; effective March 21, 2016.

RULE 6-30.4 RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in condominium and planned development law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement must show that condominium and planned development law comprises at least 40 percent of the applicant's practice.

(b) Practical Experience. The applicant must demonstrate continued compliance with the requirements of rule 6-30.3(c).

(c) Education. The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in condominium and planned development law, in accordance with the standards set forth in rule 6-30.3(e).

(d) Peer Review. The applicant must submit the names and addresses of at least 3 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in condominium and planned development law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 2 of the 3 references must be lawyers or judges, and at least 1 must be a member of The Florida Bar. The condominium and planned development law certification committee may, at its option, send reference forms to other lawyers and judges.

New subchapter added January 21, 2016; effective March 21, 2016.

6-31 STANDARDS FOR BOARD CERTIFICATION IN INTERNATIONAL LITIGATION AND ARBITRATION

RULE 6-31.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar, eligible to practice law in Florida, and meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in International Litigation and Arbitration." The purpose of the standards is to identify those lawyers who have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in international litigation and arbitration.

New subchapter added November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 6-31.2 DEFINITIONS

(a) International Litigation and Arbitration. "International litigation and arbitration" is the practice of law dealing with disputes in court or arbitration arising from the relations between or among states and international organizations as well as the relations between or among nationals of different states, or between a state and a national of another state. The term "international litigation and arbitration" includes foreign and comparative law.

(b) Practice of Law. The "practice of law" for this area is defined as set out in rule 6-3.5(c)(1). Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant's qualifying activity is spent as a teacher of international litigation and arbitration subjects in an accredited law school.

(c) International Litigation and Arbitration Certification Committee. The international litigation and arbitration certification committee will consist of 9 members. The international litigation and arbitration committee members will initially be appointed according to the criteria set forth in rule 6-3.2(a).

New subchapter added November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 6-31.3 MINIMUM STANDARDS

The applicant must demonstrate the following on a form approved by the committee, which may require additional written or oral supplementation.

(a) Minimum Period of Practice. The applicant must have engaged in the practice of law, either in the United States or abroad, and must have been a member in good standing and eligible to practice law in their jurisdiction not less than 5 years as of the date of application. The years of law practice need not be consecutive. Receipt of an LL.M degree in international law, as defined in rule 6-21.2(a), or in another field, may be approved by the international litigation and arbitration certification committee to constitute 1 year of the practice of law requirement, but not the 5-year bar membership requirement, specified in this subdivision.

(b) Substantial Involvement. The applicant must demonstrate substantial involvement in the practice of international litigation and/or arbitration during each of the 3 years immediately preceding the date of application. The applicant must have substantial involvement in contested international litigation and arbitration cases sufficient to demonstrate special competence as an international litigation and arbitration lawyer. Substantial involvement includes active participation in client interviewing, counseling and investigating, preparation of pleadings and arbitration submissions, participation in discovery, taking of testimony, presentation of evidence, negotiation of settlement, drafting and preparation of settlement agreements, and argument and trial of international cases in court or before an arbitral panel, or service as an arbitrator. For purposes of this section, time devoted to lecturing on or writing about international litigation and arbitration may be included.

(c) Minimum Number of Matters. The applicant must have had substantial involvement in a minimum of 16 contested international litigation and arbitration matters during the 8-year period immediately preceding application. These matters must have proceeded at least to the filing of a complaint or similar pleading, statement of claim, or demand for arbitration, and involve substantial legal or factual issues. At least 5 of the 16 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, an arbitration panel, administrative agency, bankruptcy court, or other similar body. "Submission to the trier of fact" requires completion of the case in chief of the plaintiff, petitioner, or claimant or, the actual submission of a motion for summary judgment or the response to that motion. The international litigation and arbitration certification committee may consider involvement in protracted adversary proceedings to satisfy any of these requirements. A "protracted adversary proceeding" is an international litigation and arbitration matter that is so time consuming it precludes the applicant from meeting the requirements of this subdivision.

In order to demonstrate compliance with the requirements of this section, the following criteria will be applicable:

- (1) summary judgments may not count for more than 3 of the 5 contested matters submitted to the trier of fact;

(2) submission to the trier of fact, other than as to summary judgment, requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the equivalent in arbitration;

(3) each preliminary injunction or other evidentiary hearing will count as 1 of the 5 matters submitted to the trier of fact; and

(4) each matter in which the applicant supervises an associate will qualify the matter as 1 of the 16, but not as 1 of the 5 matters submitted to the trier of fact.

(d) Education. The applicant must demonstrate that during the 5-year period immediately preceding the date of application, the applicant has completed at least 50 hours of continuing legal education in the field of international litigation and arbitration according to the policies established by the committee or the board of legal specialization and education. This requirement can be met through the following activities to the extent that they are focused on international litigation and arbitration:

(1) attendance at continuing legal education seminars;

(2) satisfactory completion of graduate-level law school courses while enrolled in an LL.M program in international law or comparative law;

(3) satisfactory completion of graduate-level law school courses involving international law aspects while enrolled in a graduate law program;

(4) lecturing at continuing legal education seminars;

(5) authoring articles on books or teaching courses at an accredited law school.

(e) Peer Review. The applicant must submit the names and addresses of 5 lawyers or judges who are neither relatives nor current associates or partners of the applicant to attest to the applicant's substantial involvement, practical experience, and special competence in international litigation and/or arbitration, as well as the applicant's character, ethics, and reputation for professionalism. The international litigation and arbitration certification committee may send reference forms to other lawyers and judges.

(f) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in international litigation and arbitration to justify the representation of special competence to the legal profession and the public.

(g) Exemption. An applicant who has been substantially involved in international litigation and arbitration for a minimum of 20 years and who otherwise fulfills the standards set forth in rule 6-3.5(d) and this subchapter is exempt from the examination. This exemption is applicable only to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

New subchapter added November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 6-31.4 INTERNATIONAL LITIGATION AND ARBITRATION RECERTIFICATION

During the 5-year period immediately preceding the date of application for recertification, the applicant must satisfy the following requirements for recertification:

(a) Substantial Involvement. The applicant must demonstrate continuous and substantial involvement in the practice of international litigation and arbitration since the last date of certification or recertification. The demonstration of substantial involvement must be made in accordance with the standards set forth in this subchapter.

(b) Matters. The applicant must have had substantial involvement in a minimum of 10 contested international litigation and arbitration matters during the 5-year period immediately preceding reapplication. These matters must have proceeded at least to the filing of a complaint or similar pleading, statement of claim, or demand for arbitration, and involve substantial legal or factual issues. At least 3 of the 10 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, an arbitration panel, administrative agency, bankruptcy court, or other similar body. “Submission to the trier of fact” requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the actual submission of a motion for summary judgement or response to that motion. The international litigation and arbitration certification committee may consider involvement in protracted adversary proceedings to satisfy any of these requirements for good cause shown. A “protracted adversary proceeding” is an international litigation and arbitration matter that is so time consuming it precludes the applicant from meeting the requirements of this subdivision.

The applicant must demonstrate compliance on a form approved by the committee using the following criteria:

(1) summary judgments may not count as more than 1 of the 3 matters submitted to the trier of fact;

(2) submission to the trier of fact, other than as to summary judgment, requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the equivalent in arbitration;

(3) each preliminary injunction or other evidentiary hearing will count as 1 of the 3 matters submitted to the trier of fact; and

(4) each matter in which the applicant supervises an associate will qualify as 1 of the 10, but not as 1 of the 3, matters submitted to the trier of fact.

(c) Education. The applicant must show completion of at least 50 hours of approved continuing legal education in international litigation and arbitration since the filing of the last application for certification as provided in this subchapter.

(d) Peer Review. The applicant must submit the names and addresses of 5 other lawyers or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international litigation and arbitration, as well as the applicant's character, ethics, and reputation for professionalism. The international litigation and arbitration certification committee may send reference forms to other lawyers and judges.

New subchapter added November 9, 2017, effective February 1, 2018 (SC16-1961).

CHAPTER 7. CLIENTS' SECURITY FUND RULES

7-1. GENERALLY

RULE 7-1.1 GENERALLY

The board of governors may provide monetary relief to persons who suffer reimbursable losses as a result of misappropriation, embezzlement, or other wrongful taking or conversion of money or other property that comes into the possession or control of a member of The Florida Bar as provided elsewhere in these rules, including, but not limited to, attorney's fees.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 2009, by the Board of Governors of The Florida Bar; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010.

RULE 7-1.2 FUND ESTABLISHED

Pursuant to the authority granted by rule 1-8.4 of these Rules Regulating The Florida Bar, the board of governors hereby establishes a separate fund designated "Clients' Security Fund of The Florida Bar."

RULE 7-1.3 ADMINISTRATION

The fund shall be administered in accordance with regulations adopted by the board of governors.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 7-1.4 DEFINITIONS

For this rule the following terms shall have the following meanings:

(a) Claimant. "Claimant" means a person or persons or any legal entity that has filed a claim with The Florida Bar for a grant of monetary relief from the fund based on a claim that the person or entity has suffered a reimbursable loss.

(b) The Bar. "The bar" means The Florida Bar.

(c) The Board. "The board" means the board of governors of The Florida Bar.

(d) The Committee. The "committee" means the "Clients' Security Fund Committee," a standing committee of the bar.

(e) The Fund. "The fund" means the Clients' Security Fund of The Florida Bar.

(f) Reimbursable Loss. "Reimbursable loss" means a loss suffered by a claimant by reason of misappropriation, embezzlement, or other wrongful taking or conversion of money or other property by a member of The Florida Bar when acting: (1) as a lawyer; or (2) in a fiduciary capacity customary to the practice of law as a lawyer for the claimant and related to the

representation of the claimant as the claimant's lawyer; or (3) as an escrow holder or other fiduciary having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as the result of a lawyer and client relationship; or (4) as a lawyer within a law firm of the member of The Florida Bar who was hired by the claimant to provide the legal service; or (5) as the claimant's lawyer where a nonlawyer employee commits the misappropriation, embezzlement, or other wrongful taking or conversion provided, however, that such a relationship was not for a wrongful purpose and the claimant was not guilty of any bad faith in putting the money or other property in possession or control of the lawyer.

(g) CSF Contribution. "CSF Contribution" means the total amount of the annual membership fee allocated to the fund as determined each fiscal year.

(h) Fee Claim. "Fee claim" means a reimbursable loss based on fees paid to a member of The Florida Bar for services to be rendered.

(i) Misappropriation Claim. "Misappropriation claim" means a reimbursable loss for misappropriation, embezzlement, or other wrongful taking or conversion of money or other property by a member of The Florida Bar.

COMMENT

Rule 7-1.4 is the definitional section of the Clients' Security Fund rules. Subsection (f) defines what is a reimbursable loss. If a claim does not fall within the definition of a reimbursable loss, a claim cannot be paid.

Central to the definition of a reimbursable loss is the existence of a lawyer-client relationship. If the lawyer was not acting in the capacity of a lawyer, the loss is not reimbursable. For this reason, subsection (f)(2) states that the lawyer must be acting in a fiduciary capacity customary to the practice of law. This requires that but for the fact that the individual was a lawyer, the individual would not have been acting in the fiduciary capacity. For instance, if the lawyer is appointed by the court to act as personal representative, the relationship would be customary to the practice of law and the loss reimbursable. On the other hand, if an individual is acting in a capacity unrelated to a lawyer-client relationship where their status as a lawyer is not material to the claim, the loss would not be reimbursable.

As noted in the Rules of Professional Conduct, when a client contracts for legal services, the client establishes a relationship not only with the individual lawyer but may also establish a relationship with the law firm. Subsection (f)(4) recognizes this. As a result, for purposes of determining whether the claimed loss is a reimbursable loss, it will be assumed that the relationship is with both the individual lawyer and the law firm. Therefore, if a client enters into an attorney-client relationship with attorney A but another attorney in the law firm commits the misappropriation, embezzlement, or other wrongful taking or conversion of money or other property, the claim may be considered a reimbursable loss. All other prerequisites to payment apply to the claim and will be considered in analyzing the claim and recommending denial or payment. This includes, but is not limited to, the requirement that the defalcating attorney no longer be a member in good standing. However, it is not required that the attorney the claimant hired, attorney A, be disciplined or no longer be in good standing as attorney A may be innocent

of any ethical wrongdoing not having taken part in the theft. Failure to consider such a loss a reimbursable loss will unjustly penalize the claimant and subject attorney A to discipline for theft by others over whom the attorney has no control.

Subsection (f)(5) creates an exception for the requirement that an attorney-client relationship exist if the theft is by a nonlawyer employee of the lawyer or law firm. As noted above, the claimant has hired the attorney and/or law firm and should not be penalized for theft by a nonlawyer employee of the firm over whom The Florida Bar does not have disciplinary jurisdiction. Consequently, if the theft is by a nonlawyer employee, the claim may be considered a reimbursable loss and analyzed as provided elsewhere in this chapter.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended May 29, 2009 by the Board of Governors of The Florida Bar, effective July 1, 2009; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010; amended July 27, 2012 by the Board of Governors of The Florida Bar, effective July 27, 2012.

7-2. COMMITTEE

RULE 7-2.1 COMMITTEE'S DUTIES

(a) Duties Assigned by Board. The committee shall have such duties in the administration of the fund as shall from time to time be prescribed by the board.

(b) Adoption of Regulations. The committee may adopt additional regulations for the efficient administration of the fund as approved by the board.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 7-2.2 INVESTIGATIONS

(a) Investigation Required. The committee shall investigate every claim for relief that appears to meet the requirements of this chapter. As part of the investigation, the committee may request the issuance of subpoenas for the production of documentary evidence before an investigating member of the committee or the committee. The subpoena will be issued by the designated reviewer assigned to that claim. The subpoena will be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process. Any persons who without adequate excuse fail to obey such a subpoena served upon them may be cited for contempt of the Supreme Court of Florida in the manner provided by rule 3-7.11.

(b) Payment of Meritorious Claims. The committee may approve for payment from the fund claims up to a limit of \$10,000 unless, within 14 days from the date of assignment for review, the designated reviewer notifies fund staff to agenda the claim for board action. The board may otherwise approve for payment from the fund claims found to be meritorious and in accordance with the Clients' Security Fund Rules.

(c) Form for Claim. A form prescribed by The Florida Bar must be completed to initiate a claim.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252) Amended December 15, 2000 by the Board of Governors of The Florida Bar; Amended May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar. Amended and effective October 5, 2012, by the Board of Governors of The Florida Bar.

RULE 7-2.3 PAYMENTS

(a) Payment is Discretionary. If, in the judgment of the board or the committee, as the case may be, a reimbursable loss has been sustained by a claimant and the circumstances warrant relief, then, after taking into consideration the resources of the fund and the priority to be assigned to such claim, the committee or the board may, in the exercise of their respective discretion, as a matter of grace and not of right, grant monetary relief within the amount of their respective authority as set forth in rule 7-2.2(b). The decision of the board is final and not subject to appeal.

(b) Determination of Amount and Manner of Payment. Such monetary relief shall be in such an amount as the board may determine and shall be payable in such a manner and upon such conditions and terms as the board shall prescribe.

(c) No Right to Payment. No claimant shall have any right, legal or equitable, contractual or statutory, to a grant of monetary relief from the fund, and neither a determination by the board to pay any portion or all of any claim, nor partial payment, shall vest any such right in the claimant.

COMMENT

Payment from the Clients' Security Fund is discretionary. There is no right to payment. If approved, the amount of payment is limited by the regulations and the amount in the fund. Approved claims may only include the amount paid in attorney's fees or the amount of the misappropriation. Other damages incurred by the claimant will not be reimbursed. For example, the fund will not reimburse loss of interest, charges for telephone calls or travel, the difference between the settlement amount and the amount the claimant thought the matter should have been settled for, the loss in value of an item or property, or other sums not paid directly to the attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended December 15, 2000 by the Board of Governors of The Florida Bar; Amended May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010.

RULE 7-2.4 PREREQUISITES TO PAYMENT

(a) Members in Good Standing. Payments from the fund will not be made unless the lawyer is suspended, deceased, placed on the inactive list for incapacity not related to misconduct, or has had the member's status as a member of The Florida Bar revoked or terminated. However, if the theft is by a nonlawyer employee of the lawyer or law firm, a payment may be made even if the lawyer remains in good standing.

(b) Complaints Required. The filing of a grievance complaint with The Florida Bar against the attorney claimed against may be required as a prerequisite to the consideration of a Clients' Security Fund claim.

COMMENT

At times, the fund receives claims against an attorney where the theft was by a nonlawyer employee of the lawyer or law firm. As stated elsewhere in these rules, the fund may require that the claimant file a grievance complaint against the attorney. Rather than resulting in suspension or disbarment, the grievance may result in diversion, a finding of minor misconduct, or a finding of probable cause. Should this be the case, the attorney would remain in good standing. As the claimant hired the lawyer and/or law firm, the claimant should not be penalized for theft by a nonlawyer employee of the firm and discipline should not be imposed for the sole purpose of meeting a prerequisite to payment. Therefore, pursuant to this rule, the status of the attorney, in and of itself, will not act as a bar to payment of claims where the theft is by a nonlawyer employee of the lawyer or law firm. All other prerequisites to payment, including, but not limited to, exhaustion of remedies, apply to the claim and will be considered in analyzing the claim and recommending denial or payment. The prerequisite of exhaustion of remedies may include the claimant filing a suit against the lawyer, law firm, or nonlawyer employee.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010; amended July 25, 2014 by the Board of Governors of The Florida Bar, effective July 25, 2014.

RULE 7-2.5 ASSIGNMENT IN FAVOR OF BAR

(a) Assignment as Prerequisite for Payment. As a condition precedent to the grant of monetary relief, the claimant shall make an assignment in favor of the bar of the subrogation rights or of the judgment (or the unsatisfied portion thereof) obtained by the claimant against the offending member or members of the bar, and the bar shall be entitled to be reimbursed to the extent of the amount of the relief granted with respect to such claim from the first moneys recovered by reason of such subrogation or assignment.

(b) Priority of Reimbursement to Bar. Ordinarily, as a matter of policy, however, in cases where the relief granted shall have been for less than the full amount that would have been allowable except for considerations of allocating available resources of the fund or other reasons related to the administration of the fund, the bar shall not be reimbursed for the amount of the relief granted with respect to such claim until and unless the last moneys shall be recovered by reason of such subrogation or assignment.

(c) Reassignment of Claim to Claimant. The bar shall have the right but shall be under no obligation to any claimant to seek recovery from the offending lawyer or lawyers of all or any portion of such claimant's claim; and if the bar elects not to pursue recovery, a claimant shall be entitled to receive from the bar, as the owner of the claim or judgment, a reassignment thereof sufficient to permit the claimant's collection thereof in the claimant's own name, provided that such reassignment shall reserve in favor of the bar a lien upon the proceeds of any recovery to

the extent of the relief paid to the claimant from the fund. In the event of such reassignment, the claimant shall keep the bar fully informed of all the claimant efforts to obtain recovery.

(d) Recoveries. Recoveries or repayments to the bar on account of payments from the fund will be restored to the fund.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar.

7-3. FUNDS

RULE 7-3.1 MEMBERSHIP FEES ALLOCATION

The board will allocate from the annual membership fees of the members of The Florida Bar up to \$25 per member for the fund. In addition, the board will allocate up to \$25.00 per motion to appear pro hac vice or verified statement in arbitration filed pursuant to rules 1-3.10 and 1-3.11.

May 29, 2009, effective July 1, 2009, former rule 7-3.1, relating to "Funding" was deleted and former rule 7-3.2 relating to membership fees allocation was renumbered to 7-3.1 by the Board of Governors of The Florida Bar; amended April 19, 2013, by Board of Governors of The Florida Bar, effective July 1, 2013.

RULE 7-3.2 GIFTS

The board is authorized to accept for the fund any contribution or gift offered to it for use in furtherance of the purposes of the fund.

Former Rule 7-3.2 relating to membership fee allocation, was amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 29, 2009, Board of Governors of The Florida Bar amended and renumbered rule 7-3.2 relating to fees as rule 7-3.1, effective July 1, 2009. Rule 7-3.3, relating to gifts, was renumbered as rule 7-3.2.

7-4. AMENDMENTS

RULE 7-4.1 GENERALLY

The clients' security fund rules may be amended in accordance with rule 1-12.1.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

7-5. RECORDS

RULE 7-5.1 ACCESS TO RECORDS

(a) Confidentiality. All matters, including, without limitation, claims proceedings (whether transcribed or not), files, preliminary and/or final investigation reports, correspondence, memoranda, records of investigation, and records of the committee and the board of governors involving claims for reimbursement from the clients' security fund are property of The Florida Bar and are confidential.

(b) Publication of Payment Information. After the board of governors has authorized payment of a claim, the bar may publish the nature of the claim, the amount of the reimbursement, and the name of the lawyer who is the subject of the claim. The name, address, and telephone number of the claimant shall remain confidential unless specific written permission has been granted by the claimant permitting disclosure.

(c) Response to Subpoena. The Florida Bar shall, pursuant to valid subpoena issued by a regulatory agency (including professional discipline agencies) or other law enforcement agencies, provide any documents that are otherwise confidential under this rule unless precluded by court order. The Florida Bar may charge a reasonable fee for the reproduction of the documents.

(d) Response to False or Misleading Statements. The Florida Bar may make any disclosure necessary to correct a false or misleading statement made concerning a claim.

(e) Statistical Information. Statistical information and/or analyses that are compiled by the bar from matters designated as confidential by this rule shall not be confidential.

(f) Evidence of Crime. The confidential nature of these proceedings will not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

Added effective October 29, 1992 (608 So.2d 472); amended December 13, 2013, by the Board of Governors of The Florida Bar, effective December 13, 2013.

CHAPTER 8. LAWYER REFERRAL RULE
8-1. GENERALLY
RULE 8-1.1 STATEMENT OF POLICY AND PURPOSES

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. To this end bona fide not-for-profit state and local bar associations are uniquely qualified to provide lawyer referral services under supervision by The Florida Bar for the benefit of the public. It is the policy of The Florida Bar to support the establishment of local lawyer referral services and to encourage those services to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; (c) inform the public when and where to seek legal services and provide an initial determination of whether those services are necessary or advisable; and (d) provide referral to consumer, government, and other agencies when the individual's best interests so dictate.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

8-2. REQUIREMENTS
RULE 8-2.1 REQUIREMENTS FOR ESTABLISHING A LAWYER REFERRAL
SERVICE SPONSORED BY A LOCAL BAR ASSOCIATION

The Board of Governors of The Florida Bar may adopt such regulations as it deems desirable governing the establishment, operation, and termination of lawyer referral services operated by a local bar association.

No local bar association shall operate a lawyer referral service except upon application to and approval by the Board of Governors of The Florida Bar. No lawyer referral service shall be approved by The Florida Bar unless such lawyer referral service is offered primarily for the benefit of the public and unless such lawyer referral service is established and operated by a nonprofit organization exempt from federal taxation under section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 23, 2000 (763 So.2d 1002).

RULE 8-2.2 CONTENTS OF APPLICATION

An application by a local bar association to the Board of Governors of The Florida Bar for authority to operate a lawyer referral service must be in writing filed with the executive director. The application must contain the following:

(a) Statement of Benefits. A statement of the benefits to the public to be achieved by the implementation of the lawyer referral service.

(b) Proof of Nonprofit Status. Proof that the referral service is established and operated by a nonprofit organization exempt from federal taxation under section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986.

(c) Submission and Content of Bylaws. The proposed bylaws or rules and regulations that will govern the lawyer referral service must include the following regulations:

(1) All members of the proposed referral service must provide proof of professional liability insurance in the minimum amount of \$100,000 unless the proposed lawyer referral service itself carries professional liability insurance in an amount not less than \$100,000 per claim or occurrence.

(2) The proposed lawyer referral service will accept membership applications only from lawyers who maintain an office in the geographic area served by the proposed lawyer referral service.

(3) The proposed lawyer referral service agrees to maintain an alphabetical member list, updated quarterly, with The Florida Bar. In turn, The Florida Bar will notify the service of any unresolved finding of probable cause against a member. When probable cause has been found at the local grievance committee level, and the lawyer referral service has been notified, the service must hold referral to the member in question until the matter is resolved. If the member is in good standing with The Florida Bar and eligible to practice law in Florida after the resolution of the matter, then the member may be returned to the service.

(d) Estimated Number of Panel Members. The estimated number of lawyers who will participate in the service.

(e) Number of Local Lawyers. The number of lawyers in the area.

(f) Statement of Need. A statement of the condition that evidences a need for the service in the area.

(g) Geographic Operational Area. The geographic area in which the proposed referral service will operate.

(h) Statement of Operation. A statement of how the lawyer referral service will be conducted.

(i) Statement of Fees. A statement of fees to be charged by the lawyer referral service, including, but not limited to, fees charged by the referral service to members of the public using the service and fees charged by the referral service or remitted to the referral service by member lawyers.

(j) Statement of No Discrimination. A statement that the lawyer referral service will be open for referral to the members of the public without regard to race, sex, national origin, or economic status.

(k) Statement of No Discrimination in Local Bar Membership. A statement that the local bar association is representative of the profession in the area of the service and is open to all members of the profession on an equal basis.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032); March 23, 2000 (763 So.2d 1002), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 8-2.3 APPROVAL OF APPLICATION

The board of governors may approve or disapprove the application to operate a lawyer referral service or it may call for additional information upon which to base its decision. No lawyer referral service shall be commenced by or on behalf of a local bar association until approval thereof has been communicated in writing from the Board of Governors of The Florida Bar.

Amended effective March 23, 2000 (763 So.2d 1002).

8-3. SUPERVISION

RULE 8-3.1 SUPERVISION AND REPORTING REQUIREMENTS

Any lawyer referral service approved by The Florida Bar and operated by a local bar association shall submit 3 quarterly reports and an annual report to The Florida Bar. The reports shall contain:

- (a) a statement of the sources of income by category and amount;
- (b) a statement of expenditures by category and amount;
- (c) the number of attorneys who were members of the lawyer referral service for the reporting period and special panels, if any;
- (d) the number of inquiries received by the referral service from members of the public during the reporting period;
- (e) the number of referrals for legal services made by the service during the reporting period;
- (f) the number of referrals for nonlegal services made by the service during the reporting period;
- (g) a statement of the operation of the lawyer referral service, including the number of personnel employed and the means by which referrals are made by the service; and
- (h) a statement of changes, if any, to the bylaws and regulations governing the lawyer referral service.

The annual report shall also contain a proposed budget for the next year and a statement of any material changes in the operation of the lawyer referral service since the filing of the initial application under rule 8-2.2 above.

The Florida Bar shall actively supervise the operation and conduct of all lawyer referral services established under this chapter and may require such other information as it deems necessary to determine the benefits of such service to the public and the achievement of the policies stated herein. The Florida Bar shall not make any charge to the local bar association or its lawyer referral service for such supervision.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 1993 (621 So.2d 1032).

8-4. REVOCATION

RULE 8-4.1 REVOCATION

Upon good cause shown, the board of governors may revoke the authority of any bar association to operate a lawyer referral service.

8-5. IMMUNITY

RULE 8-5.1 GENERALLY

The staff of The Florida Bar Lawyer Referral Service, as well as local bar associations with a lawyer referral service approved under rule 8-2.1, including their directors, officers, lawyer referral service committees, and staff, have absolute immunity from civil liability for all acts in the course of their official duties in furtherance of this chapter.

Added and amended effective March 23, 2000 (763 So.2d 1002), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

CHAPTER 9. LEGAL SERVICES PLANS RULES AND REGULATIONS

9-1. GENERALLY

RULE 9-1.1 AUTHORITY

Pursuant to the provisions of bylaw 2-3.2(d), the Board of Governors of The Florida Bar hereby establishes these rules and regulations for the operation of legal services plans in this state.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 20, 1995 (658 So.2d 930); amended April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-1.2 STATEMENT OF POLICY AND PURPOSES

Every citizen of this state should have access to the legal system. A person's ability to gain such access is enhanced by the assistance of and representation by an attorney duly licensed to practice law in this state. However, many persons simply do not seek legal assistance because of a failure to recognize the existence of a legal problem, inability to locate an attorney, fears of excessive cost of legal representation, or other reason. To this end, it is the policy of The Florida Bar to support the concept and to actively encourage the establishment, operation, growth, and development of legal services plans as 1 means of increasing a person's ability to obtain legal services at an affordable cost in order to have the opportunity to better gain access to the legal system.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 31-April 3, 1993, by the Board of Governors of The Florida Bar; amended Dec. 7-8, 1993, by the Board of Governors of The Florida Bar; amended April 2- 4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-1.3 DEFINITIONS

Unless otherwise described in this chapter, the following terms shall have the following described meanings:

- (a) **Bar.** The bar shall mean The Florida Bar.
- (b) **Board.** The board shall mean the Board of Governors of The Florida Bar.
- (c) **Committee.** The committee shall mean the Prepaid Legal Services Committee, a standing committee of The Florida Bar.
- (d) **Group.** Group shall mean an organization of 2 or more persons whose individual members are identifiable in terms of some common interest or affinity. Examples of groups shall include, but not be limited to, the following:

- (1) churches;
- (2) educational institutions;

- (3) credit unions;
- (4) employing units; and
- (5) associations.

(e) Legal Services Plan. Legal services plan shall mean an arrangement whereby a sponsor contracts directly with a managing attorney for the provision of legal services to its members, hereinafter referred to as a plan. Lawyer referral services and legal aid societies shall be specifically excepted from this definition.

(f) Managing Attorney. Managing attorney shall mean a member in good standing of The Florida Bar who shall be the person responsible to the bar for the proper conduct and operation of a plan.

(g) Plan Attorney. Plan attorney shall mean a member in good standing of The Florida Bar who, upon contracting in writing directly with a managing attorney, shall provide legal services to plan participants under a plan.

(h) Plan Participant. Plan participant shall mean a member of a sponsor eligible to receive legal services under a plan.

(i) Sponsor. Sponsor shall mean a group that provides a plan for the benefit of its members.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended Dec. 7-8, 1993, by the Board of Governors of The Florida Bar; amended April 2-4, 1998, by the Board of Governors of The Florida Bar.

9-2. REQUIREMENTS

RULE 9-2.1 REQUIREMENTS FOR ESTABLISHING A PLAN

A managing attorney shall not be permitted to operate a plan in this state without first obtaining approval by the board of governors to establish such plan. A managing attorney seeking to obtain board approval of a plan shall file with the committee a plan application pursuant to the requirements of this chapter.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-2.2 FORM AND CONTENT OF PLAN APPLICATION

A plan application shall consist of the following:

(a) Assurances by the Managing Attorney to the Bar. The managing attorney shall make the following assurances to the bar, in writing, executed on a form approved and adopted for use for such purpose by the committee:

(1) to exercise every reasonable effort in order to assure that the plan is operated in an ethical manner and is in compliance with the Rules Regulating The Florida Bar;

(2) to have a professional liability insurance policy issued in favor of the managing attorney in an amount not less than \$100,000, and to attach to this form a copy of the declarations page of said policy;

(3) to take any and all steps reasonable and necessary in order to assure that there are a sufficient number of plan attorneys available in order to be able to adequately and properly perform the legal services to be provided under the plan;

(4) to file with the committee written notice of any proposed change to be made in any item described in the agreement described in subdivision (b).

(5) to not implement any proposed change described in subdivision (a)(4) without first obtaining the approval of the board;

(6) to file with the committee written notice of the termination of and cessation of operations by the plan within 10 days of such occurrence;

(7) to file with the committee a renewal request form approved and adopted for use for such purpose by the committee, as more particularly described in rule 9-2.5; and

(8) if applicable, to affirm and verify that the managing attorney and any specified members of the managing attorney's law firm shall be the sole plan attorney(s) under the plan.

Upon such affirmation and verification, the filing requirement of the agreement described in subdivision (c) shall be waived, and the managing attorney and any such specified members of the managing attorney's law firm shall each make an affirmative statement that the managing attorney and all such specified attorneys shall complete any and all legal services undertaken for and on behalf of a plan participant to the extent of the benefits provided under the plan in the event of the termination of the plan.

(b) Agreement by and between Managing Attorney and Sponsor. The managing attorney and sponsor shall both execute a written agreement which shall include, but not be limited to, the following:

(1) a detailed definition of who shall constitute a plan participant under the plan;

(2) a detailed description of any and all of the legal services to be provided under the plan;

(3) a detailed description of any and all of the legal services to be excluded under the plan;

(4) a detailed description of the geographic area in which the legal services shall be performed under the plan;

(5) the amount and method of payment of the fees to be paid to the managing attorney by the sponsor under the plan;

(6) the amount and method of payment of the fees to be paid to the managing attorney by the plan participants under the plan;

(7) a detailed description of the method of review and resolution of disputes and grievances arising under the plan;

(8) a method of termination of the agreement by either the managing attorney or the sponsor;

(9) an affirmative statement that the plan participant is the client under the plan and that the sponsor will have no influence whatsoever over the attorney-client relationship established thereunder;

(10) an affirmative statement that the plan participant is free to use a non-plan attorney, either at the plan participant's own expense or with reimbursement to be provided by either the managing attorney or the sponsor;

(11) a statement informing the plan participant that the plan participant may file a complaint with Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

(12) A disclaimer announcement, as follows: "The Florida Bar does not guarantee in any way the success of the plan and gives no assurances of the quantity or quality of the legal services to be provided thereunder. Total responsibility for the delivery of legal services under the plan rests solely and entirely with the sponsor and the managing attorney and the plan attorneys."

(c) Agreement by and between Managing Attorney and Plan Attorney. The managing attorney and plan attorney shall both execute a written agreement which shall include, but not be limited to, the following:

(1) an assurance by the plan attorney to have a professional liability insurance policy issued in favor of the plan attorney in an amount not less than \$100,000, and to attach to this agreement a copy of the declarations page of said policy;

(2) an affirmative statement that the plan attorney shall complete any and all legal services undertaken for and on behalf of a plan participant to the extent of the benefits provided under the plan in the event of the termination of the plan;

(3) a detailed description of any and all of the legal services to be performed by the plan attorney under the plan;

(4) a detailed description of the geographic area in which the legal services shall be performed by the plan attorney under the plan;

(5) the amount and method of payment of the fees to be paid to the plan attorney by the managing attorney under the plan;

(6) the amount and method of payment of the fees to be paid to the plan attorney by the plan participants under the plan;

(7) a detailed description of the method of review and resolution of disputes and grievances arising under the plan;

(8) a method of termination of the agreement by either the managing attorney or the plan attorney; and

(9) an affirmative statement that the plan participant is the client of the plan attorney and that neither the sponsor nor the managing attorney will have any influence whatsoever over the attorney-client relationship established by and between the plan participant and the plan attorney thereunder.

(d) Other Documents. Pursuant to the authority contained in rule 9-3.3, the committee, in its discretion, may require other documents to be included in or filed with the plan application.

(e) Application Fee. Each plan application shall be accompanied by an application fee in the amount of \$125 made payable to The Florida Bar.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 31-April 3, 1993, by the Board of Governors of The Florida Bar; amended April 2-4, 1998, by the Board of Governors of The Florida Bar. July 3, 2003, address change amended (850 So.2d 499); August 14, 2004 by the Board of Governors of The Florida Bar.

RULE 9-2.3 REVIEW OF PLAN APPLICATION BY THE COMMITTEE

The plan application described in rule 9-2.2 shall be reviewed by both staff of the bar and a plan review subcommittee of the committee. Thereupon a report shall be provided to the committee at 1 of its regularly scheduled meetings. Upon consideration of said report, the committee, in its discretion, may:

(a) approve the plan application and thereupon make a recommendation to the board to approve said plan;

(b) approve the plan application conditionally upon requiring the managing attorney to file with the committee any requested additional or corrective information and, upon such compliance by the managing attorney, then make a recommendation to the board to approve said plan;

(c) require the managing attorney to file with the committee any requested additional or corrective information so that the committee may further review the plan application; or

(d) disapprove the plan application and thereupon advise the managing attorney of the reasons therefor.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended March 31-April 3, 1993, by the Board of Governors of The Florida Bar; amended April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-2.4 APPROVAL OF PLAN BY THE BOARD

The committee shall request the board to place the committee's recommendation for approval of a plan on the agenda of a regularly scheduled meeting of the board. Upon consideration of the committee's recommendation for approval of a plan, the board in its discretion may either approve or disapprove the establishment of the plan. Thereupon the committee shall advise the managing attorney of the board's action.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-2.5 RENEWAL

All plans approved by the board pursuant to this chapter shall be subject to renewal, as follows:

(a) If said approval is granted prior to July 1 of the year, then the managing attorney shall be required to file with the committee the plan's initial renewal request form as of December 31 of said year.

(b) If said approval is granted subsequent to July 1 of the year, then the managing attorney shall be required to file with the committee the plan's initial renewal request form as of December 31 of the following year.

(c) Subsequent to the filing of the initial renewal request form, the managing attorney shall file with the committee the plan's renewal request form as of December 31 of each and every year thereafter.

(d) Each renewal request form shall be accompanied by a renewal fee in the amount of \$25 made payable to The Florida Bar.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-2.6 REVOCATION

The board, in its discretion, may revoke any and all prior approval of a plan if the plan does not comply with any rule or regulation within these Rules Regulating The Florida Bar.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

9-3. MISCELLANEOUS
RULE 9-3.1 ACTIVITIES OF MANAGING ATTORNEYS

Managing attorneys and their employees or agents may:

(a) directly contact representatives or fiduciaries of groups for the purpose of informing them of the availability of a plan offered by the managing attorney;

(b) upon board approval of a plan, provide any written form of communication to members of the sponsor for the purpose of informing them of the availability of said plan and inviting them to become plan participants therein but only in accordance with the advertising and solicitation provisions of these Rules Regulating The Florida Bar; and

(c) do any and all things necessary and proper in order to fully and completely administer the plan. Examples of permissible administrative activities shall include, but not be limited to, the compilation of the following:

- (1) types of legal services performed;
- (2) time expended per legal matter;
- (3) number of plan participants receiving legal services under the plan; and
- (4) the amount and method of payment of the fees paid to the plan attorney(s).

Notwithstanding any other provision herein to the contrary, the managing attorney is expressly prohibited from contracting with any third party of whatsoever type or kind to perform any administrative activities regarding the plan whatsoever.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-3.2 LIMITATION ON PRACTICE

Nothing in this chapter shall be construed as authorizing any limitation whatsoever on the practice of law not otherwise required of all attorneys licensed in this state.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-3.3 OPERATING RULES AND REGULATIONS

Either the board or the committee, in its discretion, may from time to time adopt such operating rules and regulations deemed to be either reasonable or necessary governing the establishment, operation, or conduct of plans under this chapter.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

RULE 9-3.4 AMENDMENTS

These rules and regulations for the operation of plans in this state may be amended pursuant to the provisions of the Rules Regulating The Florida Bar.

Added April 2-4, 1998, by the Board of Governors of The Florida Bar.

CHAPTER 10. RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW

10-1. PREAMBLE

RULE 10-1.1 JURISDICTION

Pursuant to the provisions of article V, section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law.

Amended July 9, 1987 (510 So.2d 596); June 20, 1991 (581 So.2d 901); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 10-1.2 DUTY OF THE FLORIDA BAR

The Florida Bar, as an official arm of the court, is charged with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The court shall establish a standing committee on the unlicensed practice of law and at least 1 circuit committee on unlicensed practice of law in each judicial circuit.

Former Rule 10-1.1(c). Amended July 7, 1987 (510 So.2d 596); redesignated as Rule 10-1.2 and amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

10-2. DEFINITIONS

RULE 10-2.1 GENERALLY

Whenever used in these rules the following words or terms have the following meaning unless the use of the word or term clearly indicates a different meaning:

(a) Unlicensed Practice of Law. The unlicensed practice of law means the practice of law, as prohibited by statute, court rule, and case law of the state of Florida.

(b) Paralegal or Legal Assistant. A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the supervision of a member of The Florida Bar, an out-of-state lawyer engaged in the authorized practice of law in Florida or a foreign lawyer engaged in the authorized practice of law in Florida and who performs specifically delegated substantive legal work for which the supervising lawyer is responsible. A nonlawyer or a group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the lawyer supervision required under this rule. It constitutes the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant to use the title paralegal, legal assistant, or other similar term in offering to provide or in providing services directly to the public.

(c) Nonlawyer or Nonattorney. For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar. A suspended lawyer, while a member of The Florida Bar during the period of suspension as provided

elsewhere in these rules, does not have the privilege of practicing law in Florida during the period of suspension. For purposes of this chapter, it constitutes the unlicensed practice of law for a lawyer admitted in a jurisdiction other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide.

(d) This Court or the Court. This court or the court means the Supreme Court of Florida.

(e) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules and includes UPL counsel and UPL staff counsel.

(f) Respondent. A respondent is a nonlawyer who is accused of engaging in the unlicensed practice of law or whose conduct is under investigation.

(g) Referee. A referee is the judge or retired judge appointed to conduct proceedings as provided under these rules.

(h) Standing Committee. The standing committee is the committee constituted according to the directives contained in these rules.

(i) Circuit Committee. A circuit committee is a local unlicensed practice of law circuit committee.

(j) UPL Counsel. UPL counsel is the director of the unlicensed practice of law department and an employee of The Florida Bar employed to perform such duties, as may be assigned, under the direction of the executive director.

(k) UPL. UPL is the unlicensed practice of law.

(l) The Board or Board of Governors. The board or board of governors is the Board of Governors of The Florida Bar.

(m) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned by the board of governors with respect to a particular circuit committee or matter. If a designated reviewer recuses or is unavailable, any other board member may serve as designated reviewer in that matter. The designated reviewer will be selected by the board members from the circuit of that circuit committee. If circuits have an unequal number of circuit committees and board members, review responsibility will be reassigned to equalize workloads. On reassignments, responsibility for all pending cases from a particular committee passes to the new designated reviewer. UPL counsel will be given written notice of changes in the designated reviewing members for a particular committee.

(n) Executive Committee. The executive committee is the executive committee of the Board of Governors of The Florida Bar. All acts and discretion required by the board under these rules may be exercised by its executive committee between meetings of the board as may be authorized by standing policies of the board of governors.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 20, 1995 (658 So.2d 930); June 27, 1996, effective July 1, 1996 (677 So.2d 272); Oct. 29, 1998, effective Feb. 1, 1999 (723 So.2d 208); April 25, 2002 (820 So.2d 210); October 6, 2005, effective Jan. 1, 2006 (SC05-206), (916 So.2d 655); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107), amended November 9, 2017, effective February 1, 2018 (SC16-1961) .

RULE 10-2.2. FORM COMPLETION BY A NONLAWYER

(a) Supreme Court Approved Forms. It shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communication to assist a self-represented person in the completion of blanks on a Supreme Court Approved Form. In assisting in the completion of the form, oral communication by nonlawyers is restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the self-represented person how to file the form. The nonlawyer may not give legal advice or give advice on remedies or courses of action. Legal forms approved by the Supreme Court of Florida which may be completed as set forth herein shall only include and are limited to the following forms, and any other legal form whether promulgated or approved by the Supreme Court is not a Supreme Court Approved Form for the purposes of this rule:

(1) forms which have been approved by the Supreme Court of Florida specifically pursuant to the authority of rule 10-2.1(a) [formerly rule 10-1.1(b)] of the Rules Regulating The Florida Bar;

(2) the Family Law Forms contained in the Florida Family Law Rules of Procedure; and

(3) the Florida Supreme Court Approved Family Law Forms contained in the Florida Family Law Rules of Procedure.

(b) Forms Which Have Not Been Approved by the Supreme Court of Florida.

(1) It shall not constitute the unlicensed practice of law for a nonlawyer to engage in a secretarial service, typing forms for self-represented persons by copying information given in writing by the self-represented person into the blanks on the form. The nonlawyer must transcribe the information exactly as provided in writing by the self-represented person without addition, deletion, correction, or editorial comment. The nonlawyer may not engage in oral communication with the self-represented person to discuss the form or assist the self-represented person in completing the form.

(2) It shall constitute the unlicensed practice of law for a nonlawyer to give legal advice, to give advice on remedies or courses of action, or to draft a legal document for a particular self-represented person. It also constitutes the unlicensed practice of law for a nonlawyer to offer to provide legal services directly to the public.

(c) As to All Legal Forms.

(1) Except for forms filed by the petitioner in an action for an injunction for protection against domestic or repeat violence, the following language shall appear on any form completed by a nonlawyer and any individuals assisting in the completion of the form shall provide their name, business name, address, and telephone number on the form:

This form was completed with the assistance of:

.....(Name of Individual).....

.....(Name of Business).....

.....(Address).....

.....(Telephone Number).....

(2) Before a nonlawyer assists a person in the completion of a form, the nonlawyer shall provide the person with a copy of a disclosure which contains the following provisions:

.....(Name)..... told me that he/she is a nonlawyer and may not give legal advice, cannot tell me what my rights or remedies are, cannot tell me how to testify in court, and cannot represent me in court.

Rule 10-2.1(b) of the Rules Regulating The Florida Bar defines a paralegal as a person who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. Only persons who meet the definition may call themselves paralegals.(Name)..... informed me that he/she is not a paralegal as defined by the rule and cannot call himself/herself a paralegal.

.....(Name)..... told me that he/she may only type the factual information provided by me in writing into the blanks on the form. Except for typing,(Name)..... may not tell me what to put in the form and may not complete the form for me. However, if using a form approved by the Supreme Court of Florida,(Name)..... may ask me factual questions to fill in the blanks on the form and may also tell me how to file the form.

..... I can read English

..... I cannot read English but this notice was read to me by(Name)..... in(Language)..... which I understand.

(3) A copy of the disclosure, signed by both the nonlawyer and the person, shall be given to the person to retain and the nonlawyer shall keep a copy in the person's file. The nonlawyer shall also retain copies for at least 6 years of all forms given to the person being assisted. The disclosure does not act as or constitute a waiver, disclaimer, or limitation of liability.

Added April 12, 2012, effective July 1, 2012 (SC10-1967).

RRTFB March 5, 2019

10-3. STANDING COMMITTEE

RULE 10-3.1 GENERALLY

(a) Appointment and Terms. Members of the standing committee on UPL are appointed by the Supreme Court of Florida, with advice from the Board of Governors of The Florida Bar. The committee must consist of 25 members, including 12 nonlawyers. The board appoints a chair and at least 1 vice-chair who may be nonlawyers. All appointments to the standing committee are for a 3-year term. A member may not serve more than 2 full consecutive terms. One-third of the members of the standing committee constitutes a quorum. Members of the standing committee are not subject to removal by the court during their terms of office except for cause. Cause may include unexcused absences from scheduled meetings, the number to be set by the standing committee in an attendance policy.

(b) Recusal. A member of the standing committee must not perform any standing committee function when that member:

- (1) is related by blood or marriage to the complainant or respondent;
- (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
- (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
- (4) is prejudiced or biased toward either the complainant or the respondent.

Members should recuse themselves from participation in further proceedings on notice of any of the prohibitions. The standing committee chair may disqualify any member from any proceeding in which any of the above prohibitions exists. The chair must state the prohibition on the record or in writing in a file.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); July 17, 1997 (697 So.2d 115); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 10-3.2 DUTIES OF THE STANDING COMMITTEE

It is the duty of the standing committee to receive and evaluate circuit committee reports and to determine whether litigation should be instituted in the court against any alleged offender. The standing committee may approve civil injunctive proceedings, indirect criminal contempt proceedings, or a combination of both, or other action as appropriate. In addition, the duties of the standing committee include, but are not limited to:

(a) the consideration and investigation of activities that may, or do, constitute the unlicensed practice of law and exercising final authority to close cases not deemed by the standing committee to then warrant further action by The Florida Bar for unlicensed practice of law;

(b) supervision of the circuit committees, which includes, but is not limited to:

(1) prescribing rules of procedure for circuit committees;

(2) assigning reports of unlicensed practice of law for investigation;

(3) reassigning or withdrawing matters previously assigned;

(4) exercising final authority to close cases where UPL counsel or bar counsel objects to the closing of the case by the circuit committee;

(5) exercising final authority to accept a cease and desist affidavit in cases proposed to be resolved by cease and desist affidavit where UPL counsel or bar counsel objects to the acceptance of a cease and desist affidavit;

(6) exercising final authority to accept a cease and desist affidavit and monetary penalty in cases proposed by the circuit committee to be resolved by a cease and desist affidavit that includes a monetary penalty not to exceed \$500 per incident;

(7) exercising final authority to accept a cease and desist affidavit with restitution to the complainant(s) in cases proposed by the circuit committee to be resolved by a cease and desist affidavit that includes restitution;

(8) joining with a circuit committee in a particular investigation;

(9) assigning staff investigators and bar counsel to conduct investigations on behalf of or in concert with the circuit committees; and

(10) suspending circuit committee members and chairs for cause and appointing a temporary circuit committee chair where there has been a suspension, resignation, or removal, pending the appointment of a permanent chair by the board of governors;

(c) initiation and supervision of litigation, including delegation of responsibility to bar counsel to prosecute the litigation;

(d) giving of advice regarding the unlicensed practice of law policy to the officers, board of governors, staff, sections, or committees of The Florida Bar as requested; and

(e) furnishing any and all information, confidential records, and files regarding pending or closed investigations of unlicensed practice of law to any state or federal law enforcement or regulatory agency, United States Attorney, state attorney, the Florida Board of Bar Examiners and equivalent entities in other jurisdictions, and Florida bar grievance committees and equivalent entities in other jurisdictions where there is or may be a violation of state or federal law or the Rules of Professional Conduct of The Florida Bar.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); March 23, 2000, (762 So.2d 1003); April 25, 2002 (820 So.2d 210), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 10-3.3 APPOINTMENT AND EMPLOYMENT OF UPL COUNSEL AND BAR COUNSEL

The board of governors shall employ UPL counsel, bar counsel, and other necessary employees, including investigators, to assist the standing committee to carry out its responsibilities as prescribed elsewhere in these rules. UPL counsel may appoint bar counsel to prosecute the cause before the referee.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended June 27, 1996, effective July 1, 1996 (677 So.2d 272); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210).

10-4. CIRCUIT COMMITTEES

RULE 10-4.1 GENERALLY

(a) Appointment and Terms. Each circuit committee will be appointed by the court on advice of the board of governors and will consist of not fewer than 3 members, at least one-third of whom will be nonlawyers. All appointees must be residents of the circuit or have their principal office in the circuit. The terms of the members of circuit committees are 3 years from the date of appointment by the court or until their successors are appointed and qualified. Continuous service of a member may not exceed 2 consecutive 3-year terms. A member may not be reappointed for a period of 1 year after the end of the member's second term provided, however, the expiration of the term of any member will not disqualify that member from concluding any investigations pending before that member. Any member of a circuit committee may be removed from office by the board of governors.

(b) Committee Chair. Each circuit committee will have a chair designated by the designated reviewer of that committee. A vice-chair and secretary may be designated by the chair of each circuit committee. The chair must be a member of The Florida Bar.

(c) Quorum. Three members of the circuit committee or a majority of the members, whichever is less, constitute a quorum.

(d) Panels. The circuit committee may be divided into panels of not fewer than 3 members, 1 of whom must be a nonlawyer. Division of the circuit committee into panels will only be on concurrence of the designated reviewer and the chair of the circuit committee. The 3-member panel will elect 1 of its members to preside over the panel's actions. If the chair or vice-chair of the circuit committee is a member of a 3-member panel, the chair or vice-chair must be the presiding officer.

(e) Duties. It is the duty of each circuit committee to investigate, with dispatch, all reports of unlicensed practice of law and to make prompt report of its investigation and findings to bar counsel. In addition, the duties of the circuit committee include, but are not limited to:

- (1) exercising final authority to close cases not deemed by the circuit committee to warrant further action by The Florida Bar except those cases to which UPL staff counsel objects to the closing of the case;

(2) exercising final authority to close a case with the acceptance of a letter of advice except those cases to which UPL staff counsel objects to the closing of the case with a letter of advice;

(3) exercising final authority to close cases proposed to be resolved by cease and desist affidavit except those cases to which UPL staff counsel objects to the acceptance of a cease and desist affidavit;

(4) forwarding to bar counsel for review by the standing committee recommendations for closing cases by a cease and desist affidavit that includes a monetary penalty not to exceed \$500 per incident;

(5) forwarding to bar counsel for review by the standing committee recommendations for closing cases by a cease and desist affidavit that includes restitution to the complainant(s); and

(6) forwarding to UPL staff counsel recommendations for litigation to be reviewed by the standing committee.

(f) Circuit Committee Meetings. Circuit committees should meet at regularly scheduled times, not less frequently than quarterly each year. Either the chair or vice chair may call special meetings. Circuit committees should meet at least monthly during any period when the committee has 1 or more pending cases assigned for investigation and report. The time, date and place of regular monthly meetings should be set in advance by agreement between each committee and bar counsel.

(g) Recusal. A member of a circuit committee may not perform any circuit committee function when that member:

(1) is related by blood or marriage to the complainant or respondent;

(2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;

(3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or

(4) is prejudiced or biased toward either the complainant or the respondent.

On notice of any of the above prohibitions the affected members should recuse themselves from further proceedings. The circuit committee chair has the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); Feb. 8, 2001 (795 So.2d 1); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705), (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736), (978 So.2d 91), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

10-5. COMPLAINT PROCESSING AND INITIAL INVESTIGATORY PROCEDURES

RULE 10-5.1 COMPLAINT PROCESSING

(a) Complaints. All complaints alleging unlicensed practice of law, except those initiated by The Florida Bar, must be in writing and signed by the complainant and contain a statement providing that:

Under penalties of perjury, I declare that I have read the foregoing document and that to the best of my knowledge and belief the facts stated in it are true.

(b) Review by Bar Counsel. The complaint will be reviewed by bar counsel who will determine whether the alleged conduct, if proven, would constitute a violation of the prohibition against engaging in the unlicensed practice of law. Bar counsel may conduct a preliminary, informal investigation to aid in this determination and, if necessary, may employ a Florida bar staff investigator to aid in the preliminary investigation. If bar counsel determines that the facts, if proven, would not constitute a violation, bar counsel may decline to pursue the complaint. A decision by bar counsel not to pursue a complaint will not preclude further action or review under the Rules Regulating The Florida Bar. The complainant will be notified of a decision not to pursue a complaint including the reasons for not pursuing the complaint.

(c) Referral to Circuit Committee. Bar counsel may refer a UPL file to a circuit committee for further investigation or action as authorized elsewhere in these rules.

(d) Closing by Bar Counsel and Committee Chair. If bar counsel and a circuit committee chair concur in a finding that the case should be closed without a finding of unlicensed practice of law, the complaint may be closed on such finding without reference to the circuit committee or standing committee.

(e) Referral to Bar Counsel for Opening. A complaint received by a circuit committee or standing committee member directly from a complainant will be reported to bar counsel for docketing and assignment of a case number. If the circuit committee or standing committee member decides that the facts, if proven, would not constitute a violation of the unlicensed practice of law, the circuit committee or standing committee member will forward this finding to bar counsel along with the complaint for notification to the complainant as outlined above. Formal investigation by a circuit committee may proceed after the matter has been referred to bar counsel for docketing.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 10-5.2 DISQUALIFICATION AS LAWYER FOR RESPONDENT DUE TO CONFLICT

(a) Representation Prohibited. Lawyers may not represent a party other than The Florida Bar in unlicensed practice of law proceedings authorized by these rules if they are:

- (1) currently serving on the standing committee, a circuit committee, or the board;

(2) employees of The Florida Bar; or

(3) former members of the standing committee, a circuit committee, the board and former employees of The Florida Bar if personally involved to any degree in the matter while a member of the standing committee, a circuit committee, the board or while an employee of The Florida Bar.

(b) Representation Permitted With Consent by the Board of Governors. Lawyers may represent a party other than The Florida Bar in unlicensed practice of law proceedings authorized by these rules only after receiving consent from the executive director or board of governors if they are:

(1) former members of the standing committee, a circuit committee, the board, or former employees of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the lawyer seeks to be a representative, and who did not serve in a supervisory capacity over the matter within 1 year of the service or employment;

(2) a partner, associate, employer, or employee of a member of the standing committee, a circuit committee, or the board; or

(3) a partner, associate, employer, or employee of a former member of the standing committee, a circuit committee, or the board within 1 year of the former member's service on the committee or board.

Added May 20, 2004 (SC03-705), (875 So.2d 448), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

10-6. PROCEDURES FOR INVESTIGATION

RULE 10-6.1 TAKING OF TESTIMONY

(a) Conduct of Proceedings. The proceedings of circuit committees and the standing committee when testimony is taken may be informal in nature and the committees shall not be bound by the rules of evidence.

(b) Taking Testimony. Bar counsel, the standing committee, each circuit committee, and members thereof conducting investigations are empowered to take and have transcribed the testimony and evidence of witnesses. If the testimony is recorded stenographically or otherwise, the witness shall be sworn by any person authorized by law to administer oaths.

(c) Rights and Responsibilities of Respondent. The respondent may be required to appear and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel.

(d) Rights of Complaining Witness. The complaining witness is not a party to the investigative proceeding although the complainant may be called as a witness should the matter

come before a judge or a referee. The complainant may be granted the right to be present at any circuit committee proceeding when the respondent is present before the committee to give testimony. The complaining witness shall have no right to appeal the finding of the circuit committee.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655).

RULE 10-6.2 SUBPOENAS

(a) Issuance by Court. Upon receiving a written application of the chair of the standing committee or of a circuit committee or bar counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the chief justice for the attendance of any person or production of books and records or both before counsel or the investigating circuit committee or any member thereof at the time and place designated in such application. A like subpoena shall issue upon application by any person or entity under investigation.

(b) Failure to Comply. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Supreme Court of Florida or by the circuit court of the circuit in which the subpoena was issued or where the contemnor may be found by such orders as may be necessary for the enforcement of the subpoena.

Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 17, 1997 (697 So.2d 115); April 25, 2002 (820 So.2d 210); May 20, 2004 (SC03-705); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

(a) Circuit Committee Action. On concluding its investigation, the circuit committee will report to bar counsel regarding the disposition of those cases closed, those cases where a letter of advice has been given, those cases where a cease and desist affidavit has been accepted, those cases where a cease and desist affidavit with monetary penalty has been recommended, and those cases where litigation is recommended. A majority of those present is required for all circuit committee recommendations; however, the vote may be taken by mail or telephone rather than at a formal meeting. All recommendations for a cease and desist affidavit with monetary penalty must be reviewed by the standing committee for final approval. All recommendations for litigation under these rules must be reviewed by the standing committee and a designated reviewer for final approval prior to initiating litigation.

(b) Bar Counsel Objection to Action of Circuit Committee. If bar counsel objects to any action taken by the circuit committee, the action and objection will be placed before the standing committee for review at its next scheduled meeting for a vote on the final disposition of the case. Bar counsel will inform the complainant of the complaint's disposition. Bar counsel will notify a

respondent of the complaint's disposition if the bar has contacted the respondent about the complaint.

(c) Review by Designated Reviewer. All recommendations by the standing committee that litigation be initiated must be reviewed by a designated reviewer. If the designated reviewer does not act on the recommendation within 21 days following the mailing date of the notice of standing committee action, the standing committee action will become final. If the designated reviewer disagrees with all or any part of the recommendation for litigation, the designated reviewer will make a report and recommendation to the board of governors and the board will make a final determination regarding the litigation.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended June 27, 1996, effective July 1, 1996 (677 So.2d 272); amended effective March 23, 2000 (763 So.2d 1002); April 25, 2002 (820 So.2d 210); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

10-7. PROCEEDINGS BEFORE A REFEREE

RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF

(a) Filing Complaints. Complaints for civil injunctive relief shall be by petition filed in the Supreme Court of Florida by The Florida Bar in its name.

(b) Petitions for Injunctive Relief. Each such petition shall be processed in the Supreme Court of Florida in accordance with the following procedure:

(1) The petition shall not be framed in technical language but shall with reasonable clarity set forth the facts constituting the unlicensed practice of law. A demand for relief may be included in the petition but shall not be required.

(2) The court, upon consideration of any petition so filed, may issue its order to show cause directed to the respondent commanding the respondent to show cause, if there be any, why the respondent should not be enjoined from the unlicensed practice of law alleged, and further requiring the respondent to file with the court and serve upon UPL staff counsel within 20 days after service on the respondent of the petition and order to show cause a written answer admitting or denying each of the matters set forth in the petition. The legal sufficiency of the petition may, at the option of the respondent, be raised by motion to dismiss filed prior to or at the time of the filing of the answer. The filing of a motion to dismiss prior to the filing of an answer shall postpone the time for the filing of an answer until 10 days after disposition of the motion. The order and petition shall be served upon the respondent in the manner provided for service of process by Florida Rule of Civil Procedure 1.070(b). Service of all other pleadings shall be governed by the provisions of Florida Rule of Civil Procedure 1.080.

(3) Any party may request oral argument upon any question of law raised by the initial pleadings. The court may, in its discretion, set the matter for oral argument upon the next convenient motion day or at such time as it deems appropriate.

(4) If no response or defense is filed within the time permitted, the allegations of the petition shall be taken as true for purposes of that action. The court will then, upon its motion or upon motion of any party, decide the case upon its merits, granting such relief and issuing such order as might be appropriate; or it may refer the petition for further proceedings according to rule 10-7.1(b)(6).

(5) If a response or defense filed by a respondent raises no issue of material fact, any party, upon motion, may request summary judgment and the court may rule thereon as a matter of law.

(6) The court may, upon its motion or upon motion of any party, enter a judgment on the pleadings or refer questions of fact to a referee for determination.

(c) Proceedings Before the Referee. Proceedings before the referee shall be in accordance with the following:

(1) The proceedings shall be held in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the court.

(2) Within 60 days of the order assigning the case to the referee, the referee shall conduct a case management conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference and, if civil penalties are requested, containing a notice to the respondent regarding the respondent's burden to show an inability to pay a civil penalty as set forth elsewhere in these rules.

(3) Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if said refusal were a contempt of that court.

(4) The Florida Rules of Civil Procedure, including those provisions pertaining to discovery, not inconsistent with these rules shall apply in injunctive proceedings before the referee. The powers and jurisdiction generally reposed in the court under those rules may in this action be exercised by the referee. The Florida Bar may in every case amend its petition 1 time as of right, within 60 days after the filing of the order referring the matter to a referee.

(5) Review of interlocutory rulings of the referee may be had by petition to the court filed within 30 days after entry of the ruling complained of. A supporting brief or memorandum of law and a transcript containing conformed copies of pertinent portions of the record in the form of an appendix shall be filed with the court by a party seeking such review. Any opposing party may file a responsive brief or memorandum of law and appendix containing any additional portions of the record deemed pertinent to the issues raised within 10 days thereafter. The petitioner may file a reply brief or memorandum of law within 5 days of the date of service of the opposing party's responsive brief or memorandum of law. Any party may request oral argument at the time that party's brief or

memorandum of law is filed or due. Interlocutory review hereunder shall not stay the cause before the referee unless the referee or the court on its motion or on motion of any party shall so order.

(d) Referee's Report.

(1) *Generally.* At the conclusion of the hearing, the referee shall file a written report with the court stating findings of fact, conclusions of law, a statement of costs incurred and recommendations as to the manner in which costs should be taxed as provided elsewhere in this chapter, and a recommendation for final disposition of the cause which may include the imposition of a civil penalty not to exceed \$1000 per incident and a recommendation for restitution as provided elsewhere in this chapter. The original record shall be filed with the report. Copies of the referee's report shall be served upon all parties by the referee at the time it is filed with the court.

(2) *Costs.* The referee shall have discretion to recommend the assessment of costs. Taxable costs of the proceeding shall include only:

- (A) investigative costs;
- (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; and
- (H) travel and out-of-pocket expenses of counsel in the proceedings, including those of the respondent if acting as counsel; and
- (I) any other costs which may properly be taxed in civil litigation.

(3) *Restitution.* The referee shall have discretion to recommend that the respondent be ordered to pay restitution. In such instances, the amount of restitution shall be specifically set forth in the referee's report and shall not exceed the amount paid to respondent by complainant(s). The referee's report shall also state the name(s) of the complainant(s) to whom restitution is to be made, the amount of restitution to be made, and the date by which it shall be completed. The referee shall have discretion over the timing of payments and over how those payments are to be distributed to multiple complainants. In determining the amount of restitution to be paid to complainant(s), the referee shall consider testimony and/or any documentary evidence that shows the amount paid to respondent by complainant(s) including:

- (A) cancelled checks;
- (B) credit card receipts;
- (C) receipts from respondent; and
- (D) any other documentation evidencing the amount of payment.

The referee shall also have discretion to recommend that restitution shall bear interest at the legal rate provided for judgments in this state. Nothing in this section shall preclude an individual from seeking redress through civil proceedings to recover fees or other damages.

(4) *Civil Penalty.* Except in cases where the parties have entered into a stipulated injunction, prior to recommending the imposition of a civil penalty, the referee shall determine whether the respondent has the ability to pay the penalty. The respondent has the burden to show the inability to pay a penalty. A respondent asserting an inability to pay shall file with the referee a completed affidavit containing the statutory financial information required to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury. In making a determination of whether the respondent has the ability to pay a penalty, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination. If the referee finds that the respondent does not have the ability to pay a penalty, this shall be stated in the referee's report along with a recitation of the evidence upon which the referee made this finding. If the referee finds that the respondent does have the ability to pay a penalty, this shall be stated in the referee's report along with a recitation of the evidence upon which the referee made this finding.

(5) *Stipulated Injunction.* Should the parties enter into a stipulated injunction prior to the hearing, the stipulation shall be filed with the referee. The referee may approve the stipulation or reject the stipulation and schedule a hearing as provided elsewhere in these rules. If accepted, the stipulation and original record shall then be filed with the court for final approval of the stipulation and entry of an injunction. A written report as described in rule 10-7.1(d)(1) shall be filed by the referee along with the stipulation. The respondent may agree to pay restitution in the stipulation. In such instances the amount of restitution, to whom it shall be made, how payments are to be made, the date by which it shall be completed, and whether interest as provided elsewhere in this chapter will be paid, shall be specifically set forth in the stipulation.

(6) *Timing of Payment.* Should the referee recommend the imposition of restitution, costs, or a civil penalty, the respondent shall pay the award in the following order: restitution, costs, civil penalty.

(e) Record.

(1) *Contents.* The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(2) *Preparation and Filing.* The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(3) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(f) Review by the Supreme Court of Florida.

(1) Objections to the report of the referee shall be filed with the court by any party aggrieved, within 30 days after the filing of the report, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

If the objector desires, a brief or memorandum of law in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief or memorandum of law within 20 days of service of the objector's brief or memorandum of law. The objector may file a reply brief or memorandum of law within 20 days of service of the opposing party's responsive brief or memorandum of law. Oral argument will be allowed at the court's discretion and will be governed by the provisions of the Florida Rules of Appellate Procedure.

(2) Upon the expiration of the time to file objections to the referee's report, the court shall review the report of the referee, together with any briefs or memoranda of law or objections filed in support of or opposition to such report. After review, the court shall determine as a matter of law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, whether restitution should be ordered, whether civil penalties should be awarded, and whether further relief shall be granted. Any order of the court that contains the imposition of restitution or civil penalties shall contain a requirement that the respondent send the restitution or penalty to the UPL Department of The Florida Bar. The restitution shall be made payable to the complainant(s) specified in the court's order. The Florida Bar shall remit all restitution received to the complainant(s). If The Florida Bar cannot locate the complainant(s) within 4 months, the restitution shall be returned to the respondent. The civil penalty shall be made payable to the Supreme Court of Florida. The Florida Bar shall remit all penalties received to the court. In the event respondent fails to pay the restitution as ordered by the court, The Florida Bar is authorized to file a petition for indirect criminal contempt as provided elsewhere in this chapter.

(g) Issuance of Preliminary or Temporary Injunction. Nothing set forth in this rule shall be construed to limit the authority of the court, upon proper application, to issue a preliminary or temporary injunction, or at any stage of the proceedings to enter any such order as the court deems proper when public harm or the possibility thereof is made apparent to the court, in order that such harm may be summarily prevented or speedily enjoined.

Amended: July 9, 1987 (510 So.2d 596); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); June 27, 1996, effective July 1, 1996 (677 So.2d 272); June 27, 1996 (685 So.2d 1203); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); April 25, 2002 (820 So.2d 210); May 20, 2004; (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968).

RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT

(a) Petitions for Indirect Criminal Contempt. Nothing within these rules prohibits or limits the right of the court to issue a permanent injunction in lieu of or in addition to any punishment imposed for an indirect criminal contempt.

(1) Upon receiving a sworn petition of the president, executive director of The Florida Bar, or the chair of the standing committee alleging facts indicating that a person, firm, or corporation is or may be unlawfully practicing law or has failed to pay restitution as provided elsewhere in this chapter, and containing a prayer for a contempt citation, the court may issue an order directed to the respondent, stating the essential allegations charged and requiring the respondent to appear before a referee appointed by the court to show cause why the respondent should not be held in contempt of this court for the unlicensed practice of law or for the failure to pay restitution as ordered. The referee must be a circuit judge of the state of Florida. The order must specify the time and place of the hearing, and a reasonable time must be allowed for preparation of the defense after service of the order on the respondent.

(2) The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer the order by way of explanation or defense. All motions and the answer must be in writing. A respondent's omission to file motions or answer will not be deemed an admission of guilt of the contempt charged.

(b) Indigency of Respondent. Any respondent who is determined to be indigent by the referee is entitled to the appointment of counsel.

(1) *Affidavit.* A respondent asserting indigency must file with the referee a completed affidavit containing the statutory financial information required to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury.

(2) *Determination.* After reviewing the affidavit and questioning the respondent, the referee will determine whether the respondent is indigent or the respondent is not indigent.

In making this determination, the referee must consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination.

(c) Proceedings Before the Referee. Proceedings before the referee must be in accordance with the following:

(1) Venue for the hearing before the referee must be in the county where the respondent resides or where the alleged offense was committed, whichever is designated by the court.

(2) The court or referee may issue an order of arrest of the respondent if the court or referee has reason to believe the respondent will not appear in response to the order to show cause. The respondent will be admitted to bail in the manner provided by law in criminal cases.

(3) The respondent will be arraigned and enter a plea at the time of the hearing before the referee, or prior on request. A subsequent hearing to determine the guilt or innocence of the respondent will follow a plea of not guilty. The date and time of the subsequent hearing will be set at the arraignment. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against the respondent. The respondent may testify in the respondent's own defense. No respondent may be compelled to testify. A presumption of innocence will be accorded the respondent. The Florida Bar acting as prosecuting authority must prove guilt of the respondent beyond a reasonable doubt.

(4) Subpoenas for the attendance of witnesses and the production of documentary evidence will be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena is a contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if the refusal were a contempt of that court.

(5) The referee will hear all issues of law and fact and all evidence and testimony presented will be transcribed.

(6) At the conclusion of the hearing, the referee will sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty, and the costs of prosecution, including investigative costs and restitution, if any, will be included and entered in the judgment rendered against the respondent. The amount of restitution must be specifically set forth in the judgment and must not exceed the amount paid to respondent by complainant(s). The judgment must also state the name of the complainant(s) to whom restitution is to be made, the amount of restitution to be made, and the date by which it must be completed. The referee has discretion over the timing of payments, over how those payments are to be distributed to multiple complainant(s), and whether restitution will bear interest at the legal rate provided for judgments in this state. In determining the amount of restitution to be paid to complainant(s), the referee will consider any documentary evidence that shows the amount paid to respondent by complainant(s),

including cancelled checks, credit card receipts, receipts from respondent, and any other documentation evidencing the amount of payment. Nothing in this section precludes an individual from seeking redress through civil proceedings to recover fees or other damages.

(7) Prior to the pronouncement of a recommended sentence on a judgment of guilty, the referee will inform the respondent of the accusation and judgment and afford the opportunity to present evidence of mitigating circumstances. The recommended sentence will be pronounced in open court and in the presence of the respondent.

(d) Record.

(1) *Contents.* The record includes all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(2) *Preparation and Filing.* The referee, with the assistance of bar counsel, must prepare the record, certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(3) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for that purpose, provided the motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(e) Review by the Supreme Court of Florida. The judgment and recommended sentence, on a finding of “guilty,” together with the entire record of proceedings must be forwarded to the Supreme Court of Florida for approval, modification, or rejection based upon the law. The petitioner or the respondent may file objections, together with a supporting brief or memorandum of law, to the referee’s judgment and recommended sentence within 30 days of the date of filing with the court of the referee’s judgment, recommended sentence, and record of proceedings, or in the case where a party seeks review of a referee’s denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

A responsive brief or memorandum of law may be filed within 20 days after service of the initial brief or memorandum of law. A reply brief or memorandum of law may be filed within 20 days after service of the responsive brief or memorandum of law.

(f) Fine or Punishment. The punishment for an indirect criminal contempt under this chapter will be a fine, not to exceed \$2500, imprisonment of up to 5 months, or both.

(g) Costs and Restitution. The court may also award costs and restitution.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended: July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2000 (763 So.2d 1002); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (875 So.2d 448); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655); December 20, 2007, effective March 1, 2008 (Sc06-736), (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234). Amended June 11, 2015, effective October 1, 2015 (SC14-2088).

RULE 10-7.3 ENFORCEMENT OF AWARD OF CIVIL PENALTY

If the respondent fails to pay the civil penalty within the time ordered by the court, The Florida Bar may conduct discovery in aid of execution. If the discovery shows that the respondent no longer has the ability to pay the civil penalty, The Florida Bar shall file with the court a motion to dissolve the civil penalty. The court may dissolve the civil penalty or may order that the penalty stand. If the discovery shows that the respondent has the ability to pay the civil penalty, The Florida Bar may file a petition for indirect criminal contempt as provided elsewhere in this chapter.

Added November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a)

10-8. CONFIDENTIALITY

RULE 10-8.1 FILES

(a) Files Are Property of Bar. All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those unlicensed practice of law matters conducted in county or circuit courts, are property of The Florida Bar. All of those matters shall be confidential and shall not be disclosed except as provided in these rules. When disclosure is permitted under these rules, it shall be limited to information concerning the status of the proceedings and any information that is part of the UPL record as defined in these rules.

(b) UPL Record. The UPL record shall consist of the record before a circuit committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, and recordings and transcripts of hearings and transcribed testimony furnished to, served on, or received from the respondent or the complainant. The record before the circuit committee shall consist of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of circuit committee meetings or transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The record before a referee and the record before the Supreme Court of Florida shall include all items properly filed in the cause including pleadings, transcripts of testimony, exhibits in evidence, and the report of the referee.

(c) Limitations on Disclosure. Any material provided to or promulgated by The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the UPL

record, that portion of the UPL record may be sealed by the circuit committee chair, the referee, or the court.

(d) Disclosure of Information. Unless otherwise ordered by this court or the referee in proceedings under this rule, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Response to Inquiry. Representatives of The Florida Bar, authorized by the board of governors, shall reply to inquiries regarding a pending or closed unlicensed practice of law investigation as follows:

(1) *Cases Opened Prior To November 1, 1992.* Cases opened prior to November 1, 1992, shall remain confidential.

(2) *Cases Opened On or After November 1, 1992.* In any case opened on or after November 1, 1992, the fact that an unlicensed practice of law investigation is pending and the status of the investigation shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(3) *Recommendations of Circuit Committee.* The recommendation of the circuit committee as to the disposition of an investigation opened on or after November 1, 1992, shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(4) *Final Action by Circuit Committee, Standing Committee, Designated Reviewer, and Bar Counsel.* The final action on investigations opened on or after November 1, 1992, shall be public information. The UPL record in cases opened on or after November 1, 1992, that are closed by the circuit committee, the standing committee, or bar counsel as provided elsewhere in these rules, cases where a cease and desist affidavit has been accepted, and cases where a litigation recommendation has been approved by a designated reviewer as provided elsewhere in these rules, shall be public information and may be provided upon specific inquiry except that information that remains confidential under rule 10-8.1(c). The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(f) Production of UPL Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the UPL record even if otherwise deemed confidential under these rules. The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(g) Notice to Judges. Any judge of a court of record may be advised as to the status of a confidential unlicensed practice of law case and may be provided with a copy of the UPL record. The judge shall maintain the confidentiality of the matter.

(h) Response to False or Misleading Statements. If public statements that are false and misleading are made about any UPL case, The Florida Bar may make any disclosure necessary to correct such false or misleading statements.

(i) Providing Otherwise Confidential Material. Nothing contained herein shall prohibit The Florida Bar from providing otherwise confidential material as provided in rule 10-3.2(e).

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended effective October 29, 1992 (608 So.2d 472); July 17, 1997 (697 So.2d 115); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); April 25, 2002 (820 So.2d 210); October 6, 2005, effective January 1, 2006 (SC05-206), (916 So.2d 655) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968).

10-9. ADVISORY OPINIONS

RULE 10-9.1 PROCEDURES FOR ISSUANCE OF ADVISORY OPINIONS ON THE UNLICENSED PRACTICE OF LAW

(a) Definitions.

(1) *Committee.* The committee is the standing committee on UPL as constituted according to the directives contained in these rules.

(2) *Petitioner.* A petitioner is an individual or organization seeking guidance as to the applicability of the state's prohibitions against the unlicensed practice of law.

(3) *Public Notice.* Public notice is publication in a newspaper of general circulation in the county in which the hearing will be held and in *The Florida Bar News*.

(4) *Court.* The court is the Supreme Court of Florida (or any other court in the state of Florida as the supreme court may designate).

(b) Requests for Advisory Opinions. A petitioner may request a formal advisory opinion concerning activity that may constitute the unlicensed practice of law by sending a question to The Florida Bar's UPL Department at the bar's headquarters address in Tallahassee. The question must be in writing, state all operative facts, and ask whether the activity constitutes the unlicensed practice of law. The request will be reviewed by UPL staff counsel. If the request complies with the requirements of this rule, the request will be placed on the agenda for the next scheduled meeting of the committee. At that meeting, the committee will determine whether to accept the request, which is within the discretion of the committee. If the committee accepts the request, a public hearing as provided elsewhere in this rule will be scheduled.

(c) Limitations on Advisory Opinions. No advisory opinion may be rendered with respect to any case or controversy pending in any court or tribunal in this jurisdiction or any matter currently the subject of an unlicensed practice of law or grievance investigation by The Florida Bar. However, the committee will hold a public hearing and issue a proposed formal advisory opinion under circumstances described by the court in *Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905 (Fla. 2010), when the petitioner is a party to a lawsuit and that suit has been stayed or dismissed without prejudice. No informal advisory opinion will be issued except as provided elsewhere in these rules.

(d) Services of Voluntary Counsel. The committee may request and accept the voluntary services of a person licensed to practice in this state when the committee deems it advisable to receive written or oral advice regarding the question presented by the petitioner.

(e) Conflict of Interest. Committee members will not participate in any matter in which they have either a material pecuniary interest that would be affected by an advisory opinion or committee recommendation or any other conflict of interest that should prevent them from participating. However, no action of the committee will be invalid where full disclosure has been made and the committee has not decided that the member's participation was improper.

(f) Notice, Appearance, and Service.

(1) At least 30 days in advance of the committee meeting at which a hearing is to be held with respect to a potential advisory opinion, the committee must give public notice of the date, time, and place of the hearing, provide a general description of the subject matter of the request and the bar website and address where a full copy of the question presented can be obtained, and invite written comments on the question. On the announced date the committee will hold a public hearing at which any person may present oral testimony and be represented by counsel. At the time of or prior to the hearing any person may file written testimony on the issue before the committee. Additional procedures not inconsistent with this rule may be adopted by the committee.

(2) After the hearing the committee will vote whether to issue either a written proposed advisory opinion, a letter that declines to issue an opinion, or an informal opinion as provided elsewhere in this rule. No other form of communication is deemed to be an advisory opinion.

(3) A proposed advisory opinion must be in writing and bear a date of issuance. The cover page of the advisory opinion will state that it is a proposed advisory opinion, is only an interpretation of the law and does not constitute final court action. The committee will arrange for the publication of notice of filing the proposed advisory opinion with a summary in *The Florida Bar News* within a reasonable time. Interested parties will be furnished a copy of the full opinion on request.

(g) Service and Judicial Review of Proposed Advisory Opinions.

(1) In the case of any proposed advisory opinion in which the standing committee concludes that the conduct in question is not the unlicensed practice of law, it will decide, by a vote of a majority of the committee members present, either to publish the advisory opinion as provided elsewhere in this rule as an informal advisory opinion, or to file a copy of the opinion with the court.

(2) In the case of any proposed advisory opinion in which the standing committee concludes that the conduct in question constitutes or would constitute the unlicensed practice of law, the committee must file a copy of the opinion and all materials considered by the committee in adopting the opinion with the clerk of the court. The proposed advisory opinion and the notice of the filing will be furnished to the petitioner.

(3) Within 30 days of the filing of the proposed advisory opinion, the petitioner and any other interested party may file a brief or memorandum in response to the proposed advisory opinion, copies of which must be served on the committee at the Florida Bar's headquarters address in Tallahassee. The committee may file a responsive brief or

memorandum within 20 days of service of the initial brief or memorandum. The petitioner, and other interested persons, may file a reply brief within 10 days of service of the responsive brief or memorandum. The court may permit reasonable extension of these time periods. Oral argument will be allowed at the court's discretion. Filing, service, and oral argument will be governed by the Florida Rules of Appellate Procedure.

(4) The court will review all filings after which the court will approve, modify, or disapprove the proposed advisory opinion. The court's opinion will have the force and effect of an order of the court and be published accordingly. There will be no further review of the opinion except as granted by the court in its discretion, on petition to the court.

Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Feb. 8, 2001 (795 So.2d 1); May 20, 2004 (SC03-705), (875 So.2d 448); January 26, 2012 (SC11-649), effective April 1, 2012; amended October 15, 2015, effective immediately (SC15-687), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

10-10. IMMUNITY

RULE 10-10.1 GENERALLY

The members of the standing committee and circuit committees, as well as staff persons and appointed voluntary counsel assisting those committees, shall have absolute immunity from civil liability for all acts in the course of their official duties.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

10-11. AMENDMENTS

10-11.1 GENERALLY

Rules governing the investigation and prosecution of the unlicensed practice of law may be amended in accordance with the procedures set forth in rule 1-12.1.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

CHAPTER 11. RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM

11-1. GENERALLY

RULE 11-1.1 PURPOSE

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rules are adopted.

Amended April 21, 1994 (635 So.2d 968).

RULE 11-1.2 ACTIVITIES

(a) Definition. A law school practice program is a credit-bearing clinical program coordinated by a law school in which students directly provide representation to clients in litigation under the supervision of a lawyer.

(b) Appearance in Court or Administrative Proceedings. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance. In those cases in which the indigent person has a right to appointed counsel, the supervising attorney shall be personally present at all critical stages of the proceeding. In all cases, the supervising attorney shall be personally present when required by the court or administrative tribunal who shall determine the extent of the eligible law student's participation in the proceeding.

(c) Appearance for the State in Criminal Proceedings. An eligible law student may also appear in any criminal matter on behalf of the state with the written approval of the state attorney or the attorney general and of the supervising lawyer. In such cases the supervising attorney shall be personally present when required by the court who shall determine the extent of the law student's participation in the proceeding.

(d) Appearance on Behalf of Governmental Officers or Entities. An eligible law student may also appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, or state agencies or on behalf of a municipality or county, provided that the municipality or county has a full-time legal staff, with the written approval of the attorney representing the state, state officer, state agency, municipality, or county. The attorney representing the state, state officer, state agency, municipality, or county shall supervise the law student and shall be personally present when required by the court or administrative tribunal, which shall determine the extent of the law student's participation in the proceeding.

(e) Filing of Consent and Approval. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. If the client is the state attorney, state officer, or governmental entity, it shall be sufficient to file the written

consent and approval with the clerk and each presiding judge once for the term of the student's participation.

(f) Fixing of Standards of Indigence. The board of governors shall fix the standards by which indigence is determined under this chapter upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.

Amended April 2, 1992 (596 So.2d 453); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 21, 1994 (635 So.2d 968).

RULE 11-1.3 REQUIREMENTS AND LIMITATIONS

In order to make an appearance pursuant to this chapter, the law student must:

(a) have registered with the Florida Board of Bar Examiners as a certified legal intern registrant; have paid the \$75 fee for such registration if the registration is completed within the first 250 days of the registrant's law school education or \$150 if the registration is filed after the 250-day deadline; and have received a letter of clearance as to character and fitness from the Florida Board of Bar Examiners; any fee paid under this subdivision shall be deducted from the applicable application fee should the certified legal intern registrant subsequently decide to apply for admission to The Florida Bar;

(b) be duly enrolled in the United States in, and appearing as part of a law school practice program of, a law school approved by the American Bar Association;

(c) have completed legal studies amounting to at least 4 semesters or 6 quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

(d) be certified by the dean of the student's law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern in a law school practice program;

(e) be introduced to the court in which the student is appearing by an attorney admitted to practice in that court;

(f) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent a state attorney, public defender, legal aid organization, or state officer or governmental entity from paying compensation to the eligible law student (nor shall it prevent any of the foregoing from making such charge for its services as it may otherwise require); and

(g) certify in writing that the student has read and is familiar with the Rules of Professional Conduct as adopted by this court and will abide by the provisions thereof.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 21, 1994 (635 So.2d 968); July 5, 2007, effective August 1, 2007 (SC03-122), (964 So.2d 690).

RULE 11-1.4 CERTIFICATION OF STUDENT

The certification of a student by the law school dean:

(a) Shall be filed with the clerk of this court, and, unless it is sooner withdrawn, it shall remain in effect until the expiration of 18 months after it is filed.

(b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of this court. It is not necessary that the notice state the cause for withdrawal.

(c) May be terminated by this court at any time without notice or hearing and without any showing of cause. Notice of the termination may be filed with the clerk of the court.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 21, 1994 (635 So.2d 968).

RULE 11-1.5 APPROVAL OF LEGAL AID ORGANIZATION

Legal aid organizations that provide a majority of their legal services to the indigent and use law student interns pursuant to this chapter must be approved by the supreme court. A legal aid organization seeking approval shall file a petition with the clerk of the court certifying that it is a nonprofit organization and reciting with specificity:

(a) the structure of the organization and whether it accepts funds from its clients;

(b) the major sources of funds used by the organization;

(c) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(d) the types of legal and nonlegal services performed by the organization; and

(e) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization.

Legal aid organizations approved on the effective date of this chapter need not reapply for approval, but all such organizations are under a continuing duty to notify the court promptly of any significant modification to their structure or sources of funds.

Added April 21, 1994 (635 So.2d 968); amended July 5, 2007, effective August 1, 2007 (SC03-122), (964 So.2d 690).

RULE 11-1.6 OTHER ACTIVITIES

(a) **Preparation of Documents; Assistance of Indigents.** In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this court, but outside the personal presence of that lawyer, including:

(1) preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer;

(2) preparation of briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer;

(3) except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court, assistance to indigent inmates or correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for postconviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be signed by the attorney of record.

(b) Identification of Student in Documents and Pleadings. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If the student participated in drafting only a portion of it, that fact may be mentioned.

(c) Participation in Oral Argument. An eligible law student may participate in oral argument in appellate courts but only in the presence of the supervising lawyer.

Former Rule 11-1.5. Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended April 21, 1994 (635 So.2d 968).

RULE 11-1.7 SUPERVISION

The member of the bar under whose supervision an eligible law student does any of the things permitted by this chapter must:

(a) be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing and eligible to practice law in Florida;

(b) be a lawyer employed by a state attorney, public defender, an approved legal aid organization, a state officer, or a governmental entity enumerated in rule 11-1.2(d);

(c) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and

(d) assist the student in the student's preparation to the extent the supervising lawyer considers it necessary.

Former Rule 11-1.5. Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended April 21, 1994 (635 So.2d 968), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 11-1.8 MISCELLANEOUS

Nothing contained in this chapter shall affect the right of any person who is not admitted to the practice of law to do anything that the person might lawfully do prior to the adoption of this chapter.

Former Rule 11-1.5. Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended April 21, 1994 (635 So.2d 968).

RULE 11-1.9 CONTINUATION OF PRACTICE PROGRAM AFTER COMPLETION OF LAW SCHOOL PROGRAM OR GRADUATION

(a) Certification. A law student at an American Bar Association approved Florida law school who has filed an application for admission to The Florida Bar, has received an initial clearance letter as to character and fitness from the Florida Board of Bar Examiners, has completed a law school practice program awarding a minimum of 3 semester credit hours or the equivalent or requiring at least 200 hours of actual participation in the program, and has had certification withdrawn by the law school dean by reason of successful completion of the program or has graduated from law school following successful completion of the program may make appearances for any of the same supervisory authorities under the same circumstances and restrictions that were applicable to students in law school programs pursuant to this chapter if the supervising attorney:

(1) files a certification in the same manner and subject to the same limitations as that required to be filed by the law school dean and files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. This certification may be withdrawn in the same manner as provided for the law school dean's withdrawal of certification. The maximum term of certification for graduates shall be 12 months from graduation; and

(2) further certifies that the attorney will assume the duties and responsibilities of the supervising attorney as provided by other provisions of this chapter.

(b) Graduates of Non-Florida Law Schools. A graduate of an American Bar Association approved non-Florida law school may qualify for continuation if the graduate has made application for admission to The Florida Bar and received a letter of initial clearance as to character and fitness from the Florida Board of Bar Examiners, and has successfully completed a clinical program in law school that met the definition of a law school practice program under rule 11-1.2(a) and that awarded a minimum of 3 semester hours or the equivalent or required at least 200 hours of actual participation in the program.

(c) Termination of Certification. Failure of a post-graduate certified legal intern to do any of the following shall result in the automatic termination of certification:

(1) failure to take the next available Florida bar examination;

(2) failure to take the second available Florida bar examination, if unsuccessful on the first administration;

(3) failure to pass every portion of the Florida bar examination by at least the second administration, if unsuccessful on the first administration; or

(4) denial of admission to The Florida Bar.

Former Rule 11-1.8. Amended effective June 4, 1992, (602 So.2d 914); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); renumbered and amended April 21, 1994 and July 7, 1994 (635 So.2d 968); amended July 5, 2007, effective August 1, 2007 (SC03-122), (964 So.2d 690).

RULE 11-1.10 CERTIFICATION OF MEMBERS OF OUT-OF-STATE BARS

(a) Persons Authorized to Appear. A member of an out-of-state bar may practice law in Florida pursuant to this chapter if:

(1) the appearance is made as an employee of the attorney general, a state attorney, a public defender, or the capital collateral representative; and

(2) the member of an out-of-state bar has made application for admission to The Florida Bar; and

(3) the member of an out-of-state bar submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(4) the member of an out-of-state bar is in good standing with that bar, is eligible to practice law in that jurisdiction, and is not currently the subject of disciplinary proceedings.

(b) Term of Certification. The maximum term of certification under this section is 12 months from the date of certification; provided, however, that the certification may extend beyond 12 months if the certificate holder has passed the Florida bar examination and is awaiting the results of the character and fitness evaluation of the Florida Board of Bar Examiners. Certification may be withdrawn in the same manner as provided for the withdrawal of certification by a law school dean.

(c) Termination of Certification. Failure to take the next available Florida bar examination, failure of any portion of the Florida bar examination, or denial of admission to The Florida Bar terminates certification under this rule.

Added April 21, 1994(635 So.2d 968), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

CHAPTER 12. EMERITUS LAWYERS PRO BONO PARTICIPATION PROGRAM

12-1. GENERALLY RULE 12-1.1 PURPOSE

Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for these services. The emeritus lawyers pro bono participation program is one means of meeting these legal needs.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.2 DEFINITIONS

(a) Emeritus Lawyer. An “emeritus lawyer” is any person who meets the following eligibility and requirements.

(1) *Eligibility.* An emeritus lawyer must be a person who:

(A) is a member of The Florida Bar who is inactive or retired from the active practice of law in Florida;

(B) is an inactive or retired member of the bar of any other state or territory of the United States or the District of Columbia;

(C) has served as a judge in Florida or any other state or territory of the United States or the District of Columbia;

(D) is or was a full-time law professor employed by a law school accredited by the American Bar Association; or

(E) is an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules.

(2) *Requirements.* All emeritus lawyers must meet the following requirements:

(A) not be currently engaged in the practice of law in Florida or elsewhere except for authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules;

(B) have been engaged in the active practice of law for a minimum of 10 out of the 15 years immediately preceding the application to participate in the emeritus program, except for authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules;

(C) have been a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and have not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(D) have not failed the Florida bar examination 3 or more times except for an inactive or retired member of The Florida Bar;

(E) agree to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(F) neither ask for nor receive compensation of any kind for the legal services to be rendered under this rule; and

(G) be certified under rule 12-1.5.

(b) Approved Legal Aid Organization. An “approved legal aid organization” for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida. A legal aid organization seeking approval must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and reciting with specificity:

(1) the structure of the organization and whether it accepts funds from its clients;

(2) the major sources of funds used by the organization;

(3) the criteria used to determine potential clients’ eligibility for legal services performed by the organization;

(4) the types of legal and nonlegal services performed by the organization;

(5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and

(6) the existence and extent of malpractice insurance that will cover the emeritus lawyer.

(c) Supervising Lawyer. A “supervising lawyer” as used in this chapter is a member in good standing of The Florida Bar who supervises an emeritus lawyer engaged in activities permitted by this chapter. The supervising lawyer must:

(1) be employed by or be a participating volunteer for an approved legal aid organization; and

(2) assume responsibility consistent with the requirements of rule 4-5.1 of the Rules Regulating The Florida Bar for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus lawyer participates.

(d) Inactive. “Inactive” as used in this chapter refers to a lawyer who voluntarily elects to be placed on inactive status and was not placed on inactive status due to incapacity or discipline, or who is ineligible to practice law for failure to pay bar fees or complete continuing legal education requirements.

(e) Active Practice of Law. The “active practice of law” as used in this chapter includes, but is not limited to, private practice, working as an authorized house counsel, public employment including service as a judge, and full time employment as a law professor at or by an American Bar Association-accredited law school.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014; effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.3 ACTIVITIES

(a) Permissible Activities. An emeritus lawyer, in association with an approved legal aid organization and under the supervision of a supervising lawyer, may perform the following activities:

(1) The emeritus lawyer may appear and proceed in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the emeritus lawyer is appearing has consented in writing to that appearance and representation and a supervising lawyer has given written approval for that appearance. The written consent and approval must be filed in the record of each case and brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

(2) The emeritus lawyer may prepare, sign, and file pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus lawyer is involved. The supervising lawyer’s name and Florida Bar number must be included on each pleading or paper filed or served by an emeritus lawyer on each pleading or paper. The supervising lawyer is not required to sign each pleading or paper filed or served by an emeritus lawyer.

(3) The emeritus lawyer may engage in other activities as are necessary for any matter in which the emeritus lawyer is involved, including participating in legal clinics sponsored or provided by the emeritus lawyer’s legal aid organization, and providing advice and assistance to, and drafting legal documents for, persons whose legal problems or issues are not in litigation.

(b) Determination of Nature of Participation. The presiding judge or hearing officer may, in the judge’s or officer’s discretion, determine the extent of the emeritus lawyer’s participation in any proceedings before the court.

Comment

This rule recognizes that an emeritus lawyer may accept an appointment or assignment from a state or federal judge seeking pro bono assistance for litigants or persons appearing before the judge through a supervising legal aid organization, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or guardian ad litem. However, this rule applies to civil legal assistance and recognizes that emeritus lawyers under this rule may not provide representation and/or legal services in criminal law matters.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.4 SUPERVISION AND LIMITATIONS

(a) Supervision by Lawyer. An emeritus lawyer must perform all activities authorized by this chapter under the direct supervision of a supervising lawyer.

(b) Representation of Bar Membership Status. Emeritus lawyers permitted to perform services are not, and must not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

(c) Payment of Expenses and Award of Fees. No emeritus lawyer may receive compensation for legal services rendered under the authority of this rule from any source, including but not limited to the legal aid organization with which the lawyer is associated, the emeritus lawyer's client, or a contingent fee agreement. The prohibition against compensation for the emeritus lawyer contained in this chapter will not prevent the approved legal aid organization from reimbursing the emeritus lawyer for actual expenses incurred while rendering approved services. It also does not prevent the approved legal aid organization from charging for its services as it may properly charge. The approved legal aid organization will be entitled to receive all court-awarded attorneys' fees that may be awarded for any representation or services rendered by the emeritus lawyer.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.5 CERTIFICATION

An emeritus lawyer seeking to provide pro bono legal services must obtain approval from the clerk of the Supreme Court of Florida by filing all of the following certificates:

(a) a certificate from an approved legal aid organization stating that the emeritus lawyer is currently associated with that legal aid organization and that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of the supervising lawyer;

(b) a certificate from the highest court or agency in any state, territory, or district in which the emeritus lawyer has been licensed to practice law, certifying that the emeritus lawyer has not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years, except that an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate; and

(c) a sworn statement by the emeritus lawyer that the emeritus lawyer:

(1) has read and will abide by the Rules of Professional Conduct as adopted by the Supreme Court of Florida;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as provided in chapter 3 of these rules and elsewhere in this chapter; and

(3) will neither ask for nor receive compensation of any kind for the legal services authorized by this rule.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

(a) Withdrawal of Permission to Perform Services.

(1) The emeritus lawyer must immediately cease performing legal services if the emeritus lawyer ceases to be associated with the approved legal aid organization. The approved legal aid organization must file a statement with the clerk of the Supreme Court of Florida within 5 days after the association has ceased. The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus lawyer.

(2) The emeritus lawyer must immediately cease performing legal services if the approved legal aid organization withdraws certification of the emeritus lawyer, which may be at any time and without stating the cause for the withdrawal. The approved legal aid organization must file a statement with the clerk of the Supreme Court of Florida within 5 days after withdrawing the certification. The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus lawyer.

(3) The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida revokes permission for the emeritus lawyer to provide pro bono services, which is at the court's discretion. The clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus lawyer and the approved legal aid organization.

(4) The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida terminates the emeritus lawyer as an authorized house counsel. The Florida Bar must file a statement with the Supreme Court of Florida that the individual is no longer an authorized house counsel. The Florida Bar must mail a copy of the statement to the emeritus lawyer involved.

(b) Notice of Withdrawal. If an emeritus lawyer's certification is withdrawn for any reason, the supervising lawyer must immediately file a notice of the withdrawal in the official file of each matter pending before any court or tribunal in which the emeritus lawyer was involved.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 12-1.7 DISCIPLINE

The Supreme Court of Florida may impose appropriate proceedings and discipline under the Rules of Discipline or the Rules of Professional Conduct. In addition, the Supreme Court of Florida or the approved legal aid organization may, with or without cause, withdraw certification. The presiding judge or hearing officer may hold the emeritus lawyer in civil contempt for any failure to abide by the tribunal's orders for any matter in which the emeritus lawyer has participated.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

CHAPTER 13. AUTHORIZED LEGAL AID PRACTITIONERS RULE

13-1. GENERALLY RULE 13-1.1 PURPOSE

The purpose of this chapter is to expand the delivery of legal services to poor people. This chapter authorizes attorneys licensed to practice law in jurisdictions other than Florida to be certified to practice in Florida for up to 1 year while employed by a legal aid organization. The attorney so certified must take the next available Florida bar examination.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 13-1.2 DEFINITIONS

(a) Authorized Legal Aid Practitioner. An “authorized legal aid practitioner” is any person who:

(1) was engaged in the active practice of law for 3 years immediately preceding the application for certification under this chapter;

(2) is a member in good standing of the entity governing the practice of law of any other state or territory or the District of Columbia, eligible to practice law in that jurisdiction and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(3) has not failed the Florida bar examination and has not been denied admission to the courts of any jurisdiction during the preceding 15 years;

(4) agrees to abide by the Rules Regulating The Florida Bar and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(5) neither asks for nor receives compensation of any kind from the person on whose behalf the practitioner renders legal service under this chapter (this does not prevent the approved legal aid organization from paying compensation to the lawyer); and

(6) is certified under rule 13-1.5.

(b) Approved Legal Aid Organization. An “approved legal aid organization” for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida as set forth herein. A legal aid organization seeking approval from the Supreme Court of Florida for the purposes of this chapter must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and stating with specificity:

(1) the structure of the organization and whether it accepts funds from its clients;

(2) the major sources of funds used by the organization;

(3) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(4) the types of legal and nonlegal services performed by the organization;

(5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and

(6) the existence and extent of malpractice insurance that will cover the authorized legal aid practitioner.

(c) Supervising Attorney. A "supervising attorney" as used in this chapter is a member in good standing of The Florida Bar who is eligible to practice law in Florida and who directs and supervises an authorized legal aid practitioner engaged in activities permitted by this chapter. The supervising attorney must:

(1) be employed by or be a participating volunteer for an approved legal aid organization; and

(2) assume personal professional responsibility for supervising the conduct of the matter, litigation, or administrative proceeding in which the authorized legal aid practitioner participates.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1962).

RULE 13-1.3 ACTIVITIES

(a) Permissible Activities. An authorized legal aid practitioner, in association with an approved legal aid organization and under the supervision of a supervising attorney, may perform the following activities:

(1) Appear in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the authorized legal aid practitioner is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in each case and shall be brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

(2) Prepare pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the authorized legal aid practitioner is involved. Such pleadings also shall be signed by the supervising attorney.

(3) Prepare legal documents, provide legal advice, and otherwise engage in the practice of law.

(4) Engage in such other preparatory activities as are necessary for any matter in which the practitioner is involved.

(b) Determination of Scope of Participation. The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the authorized legal aid practitioner's participation in any proceeding.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 13-1.4 SUPERVISION AND LIMITATIONS

(a) Supervision by Attorney. An authorized legal aid practitioner must perform all activities authorized by this chapter under the direct supervision of a supervising attorney.

(b) Representation of Bar Membership Status. Authorized legal aid practitioners permitted to perform services under this chapter are not, and shall not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

(c) Payment of Expenses and Award of Fees. The limitation on compensation for the authorized legal aid practitioner contained in rule 13-1.2(a)(5) shall not prevent the approved legal aid organization from reimbursing the authorized legal aid practitioner for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal aid organization from making such charges for its services as it may otherwise properly charge. The approved legal aid organization shall be entitled to receive all court-awarded attorney's fees for any representation rendered by the authorized legal aid practitioner.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 13-1.5 CERTIFICATION

Permission for an authorized legal aid practitioner to perform services under this chapter shall become effective upon filing with and approval by the clerk of the Supreme Court of Florida of:

(a) A certification by an approved legal aid organization stating that the authorized legal aid practitioner is currently associated with that legal aid organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder.

(b) A certificate from the highest court or agency in the state, territory, or district in which the authorized legal aid practitioner is licensed to practice law certifying that the authorized legal aid practitioner is a member in good standing and has a clear disciplinary record as required by rule 13-1.2(a)(2). The certificate shall also advise of any pending complaints and/or investigations involving the authorized legal aid practitioner.

(c) A sworn statement by the authorized legal aid practitioner that the practitioner:

(1) has read and is familiar with chapter 4 of the Rules Regulating The Florida Bar as adopted by the Supreme Court of Florida and will abide by the provisions thereof;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes, as defined by chapter 3 of the Rules Regulating The Florida Bar and by rule 13-1.7, and authorizes the practitioner's home state to be advised of any disciplinary action taken in Florida; and

(3) will take the next available Florida bar examination.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 13-1.6 WITHDRAWAL OR TERMINATION OF CERTIFICATION

(a) Cessation of Permission to Perform Services. Permission to perform services under this chapter shall cease immediately upon the earliest of the following events:

(1) The passage of 1 year from the date of the authorized legal aid practitioner's certification by the court; provided, however, the certification of any authorized legal aid practitioner who has passed the Florida bar examination shall continue in effect until the date the practitioner is admitted to practice.

(2) Failure of the Florida bar examination.

(3) The filing with the clerk of the Supreme Court of Florida of a notice by the approved legal aid organization stating that:

(A) the authorized legal aid practitioner has ceased to be associated with the organization, which notice must be filed within 5 days after such association has ceased; or

(B) certification of such attorney is withdrawn. An approved legal aid organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the clerk of the Supreme Court of Florida shall be mailed by the organization to the authorized legal aid practitioner concerned.

(4) The filing with the clerk of the Supreme Court of Florida of a notice by the Supreme Court of Florida, in its discretion, at any time, stating that permission to perform services under this chapter has been revoked. A copy of such notice shall be mailed by the clerk of the Supreme Court of Florida to the authorized legal aid practitioner involved and to the approved legal aid organization to which the practitioner had been certified. The certified legal aid attorney shall have 15 days to request reinstatement for good cause.

(b) Notice of Withdrawal of Certification. If an authorized legal aid practitioner's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice

of such action in the official file of each matter pending before any court or tribunal in which the authorized legal aid practitioner was involved.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 13-1.7 DISCIPLINE

(a) Contempt; Withdrawal of Certification. In addition to any appropriate proceedings and discipline that may be imposed by the Supreme Court of Florida under chapter 3 of these Rules Regulating The Florida Bar, the authorized legal aid practitioner shall be subject to the following disciplinary measures:

(1) the presiding judge or hearing officer for any matter in which the authorized legal aid practitioner has participated may hold the authorized legal aid practitioner in civil contempt for any failure to abide by such tribunal's order, in the same manner as any other person could be held in civil contempt; and

(2) the Supreme Court of Florida or the approved legal aid organization may, at any time, with or without cause, withdraw certification hereunder.

(b) Notice to Home State of Disciplinary Action. The Florida Bar shall notify the appropriate authority in the authorized legal aid attorney's home state of any disciplinary action taken against the authorized legal aid practitioner.

Added Oct. 22, 1987, effective Jan. 1, 1988 (519 So.2d 971). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

CHAPTER 14. GRIEVANCE MEDIATION AND FEE ARBITRATION

14-1. ESTABLISHMENT

RULE 14-1.1 ESTABLISHMENT

The Florida Bar Grievance Mediation and Fee Arbitration Program (hereinafter “the program”) is hereby established as a means to empower complainants and respondents to resolve disputes without the involvement of formal disciplinary processes.

Added April 6, 1989 (542 So.2d 975); Amended: Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448).

RULE 14-1.2 JURISDICTION

(a) Fee Arbitration. The program has jurisdiction to resolve disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fee paid, charged, or claimed for legal services rendered by a member of The Florida Bar when the parties to the dispute agree to arbitrate under the program either by written contract that complies with the requirements of subdivision (i) of rule 4-1.5 or by a request for arbitration signed by all parties, or as a condition of probation or as a part of a discipline sanction as authorized elsewhere in these Rules Regulating The Florida Bar. Jurisdiction is limited to matters in which:

(1) there is no bona fide disputed issue of fact other than the amount of or entitlement to legal fees; and

(2) it is estimated by all parties that all the evidence bearing on the disputed issues of fact may be heard in 8 hours or less.

The program does not have jurisdiction to resolve disputes involving matters in which a court has taken jurisdiction to determine and award a reasonable fee to a party or that involve fees charged that constitute a violation of the Rules Regulating The Florida Bar, unless specifically referred to the program by the court or by bar counsel.

The program has authority to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

(b) Grievance Mediation. The program has jurisdiction to mediate the issues in a disciplinary file referred to the program in which the public interest is satisfied by the resolution of the private rights of the parties to the mediation. The program does not have jurisdiction to resolve the issues in a disciplinary file if any issue involved in that file must remain for resolution within the disciplinary process.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), 875 So.2d 448). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 14-1.3 AUTHORITY OF BOARD OF GOVERNORS

The board of governors shall appoint a standing committee to administer the program and the board may adopt policies for implementation thereof.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), (875 So.2d 448).

RULE 14-1.4 APPLICATION OF RULES AND STATUTES

The Florida Arbitration Code (chapter 682, Florida Statutes), shall apply to arbitrations conducted under this chapter except as modified by or in conflict with these rules.

The Florida Rules for Certified and Court-Appointed Mediators shall apply to proceedings under this chapter unless otherwise stated herein or in conflict with the provisions of this rule or the Rules of Professional Conduct. A program mediator shall not report the misconduct of another member of The Florida Bar if the Florida Rules for Certified and Court-Appointed Mediators and applicable law preclude such report.

Added May 20, 2004 (SC03-705), (875 So.2d 448).

14-2. STANDING COMMITTEE

RULE 14-2.1 GENERALLY

(a) Appointment of Members; Quorum. The board of governors shall appoint a standing committee on grievance mediation and fee arbitration comprised of:

- (1) 6 lawyers who are certified as mediators under this chapter;
- (2) 3 nonlawyers who are certified as mediators under this chapter;
- (3) 6 lawyers who are certified as arbitrators under this chapter; and
- (4) 3 nonlawyers who are certified as arbitrators under this chapter.

The board of governors will appoint a chair and vice-chair of the committee from the members listed above. A majority of members of the committee constitutes a quorum. The lawyer members of the committee shall be members of The Florida Bar in good standing.

(b) Terms. All members shall be appointed for 3-year terms, each term commencing on July 1 of the year of appointment and ending on June 30 of the third year thereafter. Terms shall be staggered so that one-third of the members of the committee shall be appointed each year. No committee member may serve for more than 2 consecutive full terms.

(c) Duties. The standing committee shall administer the program, certify mediators and arbitrators for the program, promulgate necessary standards, forms, and documents, and make recommendations, as necessary, to the board of governors for changes in the program.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); May 20, 2004 (SC03-705), corrected opinion issued July 7, 2004, (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736), 978 So.2d 91).

14-3. CERTIFICATION OF PROGRAM MEDIATORS AND ARBITRATORS

RULE 14-3.1 APPLICATION REQUIRED

(a) Applications. Persons wishing to become program mediators or arbitrators shall apply to the committee for its review and certification. The committee shall promulgate standards and forms for certification hereunder. Membership in The Florida Bar shall not be required for certification.

(b) CLE Credit for Service. Members of The Florida Bar who are program mediators and arbitrators shall be entitled to a maximum of 5 hours of CLE credit in each reporting period in the area of ethics for service in the program as provided in the policies adopted under this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

14-4. INSTITUTION OF PROCEEDINGS

RULE 14-4.1 ARBITRATION PROCEEDINGS

(a) Institution of Proceedings. All arbitration proceedings shall be instituted by the filing of a written consent to arbitration by written contract between the parties to the arbitration, or orders of this court in proceedings under these Rules Regulating The Florida Bar imposing a sanction or condition or probation, or by the consent form prescribed in the policies adopted under the authority of this chapter and signed by each party to the controversy.

(b) Position Statement and Relevant Documents. Each of the parties shall provide the arbitrator(s) with a concise statement of that party's position, including the amount claimed or in controversy, on the form prescribed and authorized by the standing committee. If there is a written contract regarding fees between the parties, a copy of that written contract shall accompany the request or submission.

(c) Referral by Intake Counsel or Bar Counsel. Intake counsel with the consent of the parties and concurrence of staff counsel, or bar counsel, with the consent of the parties, and the concurrence of the chief branch staff counsel, may refer appropriate cases to the fee arbitration program.

(d) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer appropriate cases to the fee arbitration program.

(e) Referral by Board of Governors. The board of governors, with the agreement of the parties and upon review of a file referred to it as authorized elsewhere under these Rules Regulating The Florida Bar, may refer appropriate cases to the fee arbitration program if they meet the criteria established by the policies adopted under the authority of this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 14-4.2 GRIEVANCE MEDIATION PROCEEDINGS

(a) Referral by Bar Counsel. Bar counsel, with the consent of the parties, may refer any file to the program that meets the criteria established by any policies adopted under the authority of this rule.

(b) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

(c) Referral by Board of Governors. The board of governors, upon review of a file referred to it as authorized elsewhere under the Rules Regulating The Florida Bar, may refer same to the program if it meets the criteria established by the policies adopted under the authority of this chapter.

(d) Referral by Referees. Referees, with concurrence of The Florida Bar, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter. Concurrence of The Florida Bar requires agreement of bar counsel and the member of the board of governors designated to review the disciplinary matter at issue.

(e) Referral by Order of Supreme Court of Florida. The Supreme Court of Florida may order referral of any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

Added May 20, 2004 (875 So.2d 448).

14-5. EFFECT OF AGREEMENT TO MEDIATE OR ARBITRATE AND FAILURE TO COMPLY

RULE 14-5.1 EFFECT OF REFERRAL TO MEDIATION AND FAILURE TO COMPLY

(a) Closure of Disciplinary File. Upon referral for mediation of the issues involved in a disciplinary file, the disciplinary file shall be closed without the entry of a sanction and shall remain closed except as provided in subdivision (b), below:

(b) Effect of Respondent's Failure to Attend or Comply. It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon mediation conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of a written mediation agreement without good cause.

(c) Effect of Complainant's Failure to Attend. If a file referred for mediation is not fully resolved by reason of a complainant's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY

(a) Closure of Disciplinary File. A disciplinary file that involves only fee issues shall be closed without the entry of a sanction upon the entry of an agreement to arbitrate.

(b) Effect of Respondent's Failure to Attend or Comply. It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon arbitration conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of an arbitration award without good cause.

(c) Effect of Complainant's or Other Opposing Party's Failure to Attend. If a file referred for arbitration is not fully resolved by reason of a complainant's or other opposing party's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added May 20, 2004 (875 So.2d 448).

14-6. NATURE; ENFORCEMENT OF AWARD; EFFECT OF FAILURE TO PAY RULE 14-6.1 BINDING NATURE; ENFORCEMENT; AND EFFECT OF FAILURE TO PAY AWARD

(a) Binding Determination. The parties to a proceeding under these rules are bound by the terms of the arbitration award subject to those rights and procedures to set aside or modify the award provided by chapter 682, Florida Statutes, or by the terms of an agreement reached in mediation.

(b) Enforcement of Determination. In addition to any remedy authorized in this chapter, an arbitration award may be enforced as provided in chapter 682, Florida Statutes.

(c) Effect of Failure to Pay Award. Failure of a member of the bar to pay an award within 30 days of the date on which the award became final, without just cause for that failure, will cause the member to be delinquent and ineligible to practice law, as provided elsewhere in these rules defining delinquent members.

Comment

Lack of funding, alone, does not constitute just cause under this rule.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Renumbered and Renamed May 20, 2004, (SC03-705) (875 So.2d 448); December 20, 2007, effective March 1, 2008 (978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

14-7. IMMUNITY AND CONFIDENTIALITY
RULE 14-7.1 IMMUNITY AND CONFIDENTIALITY

(a) Immunity. The members of the standing committee, mediators, arbitrators, staff of The Florida Bar, and appointed voluntary counsel assisting the committee, mediators, and arbitrators, have absolute immunity from civil liability for all acts in the course of their official duties.

(b) Confidentiality of Arbitration Proceedings and Records. All records, documents, files, proceedings, and hearings pertaining to fee arbitration under these rules are public records and will be provided on request, except for any record of an arbitrator's mental processes and any record of an arbitration panel's executive session to consider the issues raised and to reach a decision as to an award.

(c) Confidentiality of Mediation Proceedings and Records. All records, documents, files, and proceedings pertaining to mediation under this chapter are made available only as provided in the Florida Rules for Certified and Court-Appointed Mediators and applicable law.

Added March 23, 2000 (763 So.2d 1002). Renumbered from rule 14-5.3 and amended May 20, 200, (SC03-705) (875 So.2d 448); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

CHAPTER 15. REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS

15-1. GENERALLY

RULE 15-1.1 PURPOSE

The Florida Bar, as an official arm of the Supreme Court of Florida, is charged with the duty of enforcing the rules governing lawyer advertising and solicitation and with assisting members of The Florida Bar to advertise their services in a manner beneficial to both the public and the legal profession. The board of governors, pursuant to the authority vested in it under rule 2-8.3, shall create a standing committee on advertising to advise members of The Florida Bar on permissible advertising and solicitation practices. It shall be the duty of the committee to administer the advertising evaluation program set forth in subchapter 4-7.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); April 25, 2002 (820 So.2d 210).

15-2. STANDING COMMITTEE ON ADVERTISING

RULE 15-2.1 MEMBERSHIP AND TERMS

The total number of standing committee on advertising members is determined at the discretion of the board of governors of a number of no more than 20, 3-5 of which are nonlawyers representing the public. Members of the committee are appointed by the president-elect of The Florida Bar, as provided in rule 2-8.1. The president-elect designates the chair and vice-chair, with the advice and consent of the board of governors. Members of the committee serve staggered 3-year terms unless removed by the president or president-elect for non-attendance or other good cause. No member may serve more than 2 consecutive terms. A quorum consists of a majority of the members.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 15-2.2 FUNCTIONS

It shall be the task of the committee to evaluate all advertisements filed with the committee for compliance with the rules governing advertising and solicitation and to provide written advisory opinions concerning compliance to the respective filers, to develop a handbook on advertising for the guidance of and dissemination to members of The Florida Bar, and to recommend to the board of governors from time to time such amendments to the Rules of Professional Conduct as the committee may deem advisable.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 15-2.3 REIMBURSEMENT FOR PUBLIC MEMBERS

The nonlawyer public members of the standing committee shall be reimbursed for reasonable travel and related expenses associated with attendance at meetings of the committee.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 15-2.4 RECUSAL OF MEMBERS

Members of the committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or other lawyers in their firms.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451).

15-3. PROCEDURE

RULE 15-3.1 MEETINGS

The committee shall meet as often as is necessary to fulfill its duty to provide a prompt opinion regarding a submitted advertisement's compliance with the advertising and solicitation rules.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451).

RULE 15-3.2 RULES

The committee may adopt such procedural rules, subject to review by the board of governors, for its activities as may be required to enable the committee to fulfill its function.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451)..

15-4. REPORT OF COMMITTEE

RULE 15-4.1 GENERALLY

Within 3 months after the conclusion of the first year of the review program, the committee shall submit to the board of governors a report detailing the year's activities of the committee. The report shall include such information as the board of governors may require.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 15-4.2 RECORDS

(a) Maintenance of Records. The committee shall keep records of its activities for 3 years.

(b) Public Access to Records. All records of the committee shall be open for public inspection and copying with the following exceptions:

(1) proposed advertisements and proposed direct mail communications filed for advisory review when the submitting attorney advises the committee that the materials constitute protected trade secrets or proprietary information;

(2) the media, frequency, and duration of an advertisement when the submitting attorney advises the committee that the information constitutes protected trade secrets or proprietary information;

(3) the names and addresses of recipient of direct mail communications;

(4) information made confidential by rule of the Supreme Court of Florida;

(5) attorney-client communications between the bar, its committees and staff and those attorneys retained by the bar in anticipation of, or during, civil litigation; and

(6) work product prepared by an attorney retained by the bar in anticipation of, or during, civil litigation.

(c) Inspection of Copyrighted Material. Copyrighted work may be inspected but not reproduced.

Added Dec. 21, 1990, effective Jan. 1, 1991 (571 So.2d 451). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); October 29, 1992 (608 So.2d 472).

CHAPTER 16. FOREIGN LEGAL CONSULTANCY RULE

RULE 16-1.1 PURPOSE

The purpose of this chapter is to permit a person who is admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent to act as a foreign legal consultant in the state of Florida. This chapter authorizes an attorney licensed to practice law in 1 or more foreign countries to be certified by the Supreme Court of Florida, without examination, to render services in this state as a legal consultant regarding the laws of the country in which the attorney is admitted to practice.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 16-1.2 GENERAL CERTIFICATION REGULATIONS

The Supreme Court of Florida may certify to practice as a foreign legal consultant an applicant who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to the practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or public authority;

(b) has engaged in the practice of law of a foreign country for a period of not less than 3 of the 5 years immediately preceding the application for certification under this chapter and has remained in good standing as a lawyer, counselor at law, or the equivalent throughout that period;

(c) has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within 7 years immediately preceding the application for certification under this chapter and is not the subject of any disciplinary proceeding or investigation pending at the date of application for certification under this chapter;

(d) has not been denied admission to practice before the courts of any jurisdiction based on character or fitness during the 10-year period preceding application for certification under this chapter; and

(e) maintains an office in the state of Florida for the rendering of services as a foreign legal consultant.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 16-1.3 ACTIVITIES

(a) **Rendering Legal Advice.** A person certified as a foreign legal consultant under this chapter may provide legal services in the state of Florida only when these services:

(1) are limited to those regarding the laws of the foreign country in which that person is admitted to practice as a lawyer, counselor at law, or the equivalent;

(2) do not include any activity or any service constituting the practice of the laws of the United States, the state of Florida, or any other state, commonwealth, or territory of the United States or the District of Columbia including, but not limited to, the restrictions that the person will not:

(A) appear for another person a lawyer in any court or before any magistrate or other judicial officer or before any federal, state, county, or municipal governmental agency, quasi-judicial, or quasi-governmental authority in the state of Florida, or prepare pleadings or any other papers in any action or proceedings brought in any of these courts, or before any of these judicial officers, except as authorized in any rule of procedure relating to admission pro hac vice, or pursuant to administrative rule;

(B) prepare any deed, mortgage, assignment, discharge, lease, agreement of sale, or any other instrument affecting title to real property located in the United States, or personal property located in the United States, except where the instrument affecting title to such property is governed by the law of a jurisdiction in which the foreign legal consultant is admitted to practice as a lawyer, counselor at law, or the equivalent;

(C) prepare any will or trust instrument affecting the disposition of any property located in the United States and owned by a United States resident nor prepare any instrument relating to the administration of a decedent's estate in the United States;

(D) prepare any instrument regarding the marital relations, rights, or duties of a resident of the United States or the custody or care of the children of a United States resident;

(E) give legal advice on the law of the state of Florida, the United States, or any other state, subdivision, commonwealth, or territory of the United States, or the District of Columbia (whether incident to the preparation of a legal instrument or otherwise); or

(F) provide any legal services without executing a written agreement with the client that specifies that the foreign legal consultant is not admitted to practice law in the state of Florida nor licensed to advise on the laws of the United States or any other state, commonwealth, territory, or the District of Columbia, unless so licensed, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where the person is admitted to practice as a lawyer, counselor at law, or the equivalent.

(b) Representing Status as Member of The Florida Bar. Foreign legal consultants certified to render services under this chapter must not represent that they are admitted to The Florida Bar or licensed as a lawyer or foreign legal consultant in another state, commonwealth, territory, or the District of Columbia, or as a lawyer, counselor at law, or the equivalent in a foreign country, unless so licensed. Persons certified under this chapter must not use any title other than "Foreign Legal Consultant, Not Admitted to Practice Law in Florida," although that person's authorized title and firm name in the foreign country in which the person is admitted to

practice as a lawyer, counselor at law, or the equivalent may be used if the title, firm name, and the name of the foreign country are stated together with the above-mentioned designation.

Foreign legal consultants certified under this chapter must provide clients with a letter disclosing the extent of professional liability insurance coverage maintained by the foreign legal consultant, if any, as well as an affirmative statement advising the client that any client aggrieved by the foreign legal consultant will not have access to the Clients' Security Fund of The Florida Bar. The letter must further include the list of activities that the foreign legal consultant certified under this chapter is prohibited from engaging in, as set out in rule 16-1.3(a)(2)(A)-(F).

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 16-1.4 APPLICATION

An applicant under this chapter must file an application with the International Law Section of The Florida Bar that must include:

(a) a certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted certifying the applicant's admission to practice, the date of admission, good standing as a lawyer or counselor at law or the equivalent and a duly authenticated English translation of the certificate if it is not in English;

(b) a letter of recommendation from 1 of the members of the executive body of the professional authority or public body or from 1 of the judges of the highest court of law of the foreign country and an authenticated English translation of the letter if it is not in English;

(c) a sworn statement by the applicant that the applicant:

(1) has read and is familiar with the Rules of Professional Conduct as adopted by the Supreme Court of Florida and will abide by, and be subject to, their provisions;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(3) will comply with the requirements of the rule regarding disclosure;

(d) a written commitment to notify The Florida Bar of any resignation or revocation of the foreign legal consultant's admission to practice in the foreign country of admission, or in any other state or jurisdiction in which the consultant has been licensed as a lawyer, counselor at law, or equivalent or as a foreign legal consultant, or of any censure, suspension, or expulsion in respect of the admission;

(e) a notarized document setting forth the applicant's address within the state of Florida and designating the secretary of state as the person's agent on whom process may be served as if served personally on the applicant pursuant to applicable Florida law, in any action or

proceeding brought against the applicant arising out of or based on any legal services offered or provided by the applicant within or to the residents of the state of Florida, when service cannot be made on the applicant at the address after due diligence; and

(f) other evidence of the nature and extent of the applicant's educational and professional qualifications, good moral character, general fitness, and compliance with the general certification regulation set forth elsewhere in this chapter.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252). Amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 16-1.5 WITHDRAWAL OR TERMINATION OF CERTIFICATION

Permission to perform services under this chapter ceases immediately on the earliest of the following events:

(a) the filing of a notice by the Supreme Court of Florida stating that permission to perform services under this chapter has been revoked, a copy of which will be mailed by the clerk of the court to The Florida Bar and to the foreign legal consultant, after which the foreign legal consultant has 15 days to request reinstatement for good cause;

(b) the foreign country in which the foreign legal consultant is admitted to practice discontinues having a professional disciplinary system for lawyers that is generally consistent with that of The Florida Bar; or

(c) the failure of the foreign legal consultant to comply with any applicable provisions of this chapter.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 16-1.6 DISCIPLINE

(a) **Discipline by Florida Courts.** Each person certified to practice as a foreign legal consultant under this chapter is expressly subject to the Rules of Professional Conduct and to the disciplinary jurisdiction of the Supreme Court of Florida and the other courts of this state.

(b) **Withdrawal of Certification.** In addition to any appropriate proceedings and discipline that may be imposed by The Florida Bar or the Supreme Court of Florida under the Rules Regulating The Florida Bar, the Supreme Court of Florida may withdraw certification.

Added July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 16-1.7 ANNUAL SWORN STATEMENT

A person certified under this chapter as a foreign legal consultant must submit annually to The Florida Bar in the manner required by The Florida Bar:

(a) a sworn statement attesting to the foreign legal consultant's good standing as a lawyer, counselor at law, or the equivalent in the foreign country in which the person is licensed to practice; that the person intends to continue practicing as a foreign legal consultant in the state of Florida; that the person continues to meet all eligibility requirements under this chapter; that the person limits the person's practice to the activities permitted under this chapter; and that the person currently maintains an office in the state of Florida to provide legal services as a foreign legal consultant; and

(b) a renewal fee equivalent to annual membership fees paid by members of The Florida Bar eligible to practice law.

Added November 9, 2017, effective February 1, 2018 (SC16-1961).

CHAPTER 17. AUTHORIZED HOUSE COUNSEL RULE
17-1. GENERALLY
RULE 17-1.1 PURPOSE

The purpose of this chapter is to facilitate the relocation of persons employed by or to be employed by any business organization, as herein defined, for the purpose of undertaking, in whole or in part, activities, as herein defined, for such organizations. Notwithstanding the provisions of article I, sections I, Rules of the Supreme Court of Florida Relating to Admissions to the Bar, this chapter shall authorize attorneys licensed to practice in jurisdictions other than Florida to be permitted to undertake said activities in Florida while exclusively employed by a business organization without the requirement of taking the bar examination.

Added April 21, 1994 (645 So.2d 968).

RULE 17-1.2 DEFINITIONS

(a) Authorized House Counsel. An authorized house counsel is any person who:

(1) is either licensed to practice law in a United States jurisdiction other than Florida or admitted or otherwise authorized to practice as a lawyer or counselor of law or the equivalent in a foreign jurisdiction and subject to effective regulation and discipline by a duly constituted professional body or public authority or subject to recognized legal obligations pertaining to their status as lawyers;

(2) is exclusively employed by a business organization located in Florida and is residing in Florida or relocating to Florida for employment within 6 months of the application under this chapter and receives or will receive compensation for activities performed for that business organization;

(3) has completed an application for certification as required elsewhere in this chapter; and

(4) has been certified as an authorized house counsel by the Supreme Court of Florida.

(b) Business Organization. A business organization is a corporation, partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this state that is not itself engaged in the practice of law or the rendering of legal services outside of the organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising that organization by the activities of the authorized house counsel. A business organization does not include a governmental entity, governmental subdivision, political subdivision, or school board, or any other entity that has the authority to levy a tax.

Added April 21, 1994 (635 So.2d 968); Amended March 18, 1999 (746 So.2d 442); May 20, 2004 (SC03-705) (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736)(978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.3 ACTIVITIES

(a) Authorized Activities. An authorized house counsel may provide legal services in Florida solely to the employing business organization to which certification is applicable but may only engage in the following activities:

- (1) giving legal advice to the directors, officers, employees, and agents of the business organization regarding its business;
- (2) negotiating and documenting all matters for the business organization;
- (3) representation of the business organization in its dealings with any administrative agency or commission having jurisdiction; and
- (4) providing pro bono legal services under chapter 12 of these rules if certified as an emeritus lawyer.

(b) Disclosure. In any communication with individuals or organizations outside of the business organization, authorized house counsel must disclose that they are not licensed to practice law in the state of Florida. If the communication is in writing, authorized house counsel must disclose in writing the name of the business organization, their title or function, and that they are not licensed to practice law in the state of Florida. Authorized house counsel may not represent themselves as members of The Florida Bar or licensed to practice law in this state.

(c) Limitation on Representation. In no event will permitted activities include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice unless otherwise permitted or authorized by law, code, or rule or allowed by subdivision (a) of this rule or the appearance as counsel in any court, administrative tribunal, agency, or commission situated in Florida unless the rules governing the court or body authorize the appearance or the lawyer is specially admitted by the court or body in the case.

(d) Opinions to Third Parties. An authorized house counsel may not express or render a legal judgment or opinion other than when representing the authorized house counsel's employer.

Added April 21, 1994 (635 So.2d 968). Amended March 23, 2000 (763 So.2d 1002); April 25, 2002 (820 So.2d 210); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.4 CERTIFICATION

(a) Filing with The Florida Bar. The following must be filed with The Florida Bar by an individual seeking to be certified as authorized house counsel:

- (1) documentation or a certificate from all applicable United States and foreign jurisdictions proving that the registrant meets the requirements of rule 17-1.2(a)(1) and if the

lawyer is in inactive status, the documentation or certification must certify that the lawyer is in voluntary inactive status and was not placed on inactive status involuntarily;

(2) a sworn statement by the registrant that the registrant:

(A) has read and is familiar with chapters 4 and 17 of the Rules Regulating The Florida Bar and will abide by its provisions;

(B) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as defined in chapter 3 of the Rules Regulating The Florida Bar and this chapter;

(C) is not subject to a disciplinary proceeding or outstanding order of reprimand, censure, or disbarment, permanent or temporary, for professional misconduct by the bar or courts or duly constituted organization overseeing the profession or granting authority to practice law of any jurisdiction and has not been permanently denied admission to practice before the bar or duly constituted organization overseeing the profession or granting authority to practice law of any jurisdiction based on the person's character or fitness; and

(D) authorizes notification of any disciplinary or other action taken against the registrant to or from the disciplinary authority or duly constituted organization overseeing the profession or which granted authority to practice law in all United States and foreign jurisdictions where the applicant is licensed or otherwise authorized to practice law.

(3) a certificate from a business organization certifying that it meets the definition of a business organization as defined elsewhere in this chapter, that it is aware that the registrant is not licensed to practice in Florida, and it is not relying on The Florida Bar in any manner in employing the authorized house counsel;

(4) an application to The Florida Bar as promulgated by the executive director of The Florida Bar; and

(5) a filing fee set by the executive director of The Florida Bar in an amount not to exceed the amount applicable for admission to the bar examination for a lawyer licensed in a state other than Florida.

(b) Review by The Florida Bar. The Florida Bar will review applications for compliance with this chapter.

(c) Certification by Court. The Florida Bar will submit the name and address of all registrants meeting the requirements of this rule to the clerk of the Supreme Court of Florida with a request that the registrant be certified as authorized house counsel. If the registrant is employed in Florida, authorization to perform services under this rule becomes effective on the date the clerk of the Supreme Court of Florida approves the request for certification. If the registrant is relocating to Florida, the authorization becomes effective on the date of employment in Florida, which must be within 6 months of the date of the application.

(d) Annual Renewal. The certification under this chapter is annual. The authorized house counsel must pay an annual fee that is the same fee paid by active members of The Florida Bar and provide any information the bar requires during the time set by the bar.

(e) Duty to Update. An authorized house counsel must report any change in their license status or authority to practice in another applicable United States or foreign jurisdiction within 30 days of the effective date of the change in status. If an individual certified as an authorized house counsel chooses inactive status in any jurisdiction after certification, the authorized house counsel must provide documentation as required by subdivision (a)(1) of this rule. Failure to provide notice or documentation by the authorized house counsel is a basis for discipline pursuant to the Rules Regulating The Florida Bar.

Added April 21, 1994 (635 So.2d 968). Amended March 18, 1999 (746 So.2d 442); March 23, 2000 (763 So.2d 1002); Apr, 2002 (820 So.2d 210); May 20, 2004 (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736) (978 So.2d 91); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.5 TERMINATION OR WITHDRAWAL OF CERTIFICATION

(a) Cessation of Authorization to Perform Services. Authorization to perform services under this rule ceases on the earliest of the following events:

(1) the termination or resignation of employment with the business organization where the authorized house counsel was employed at the time of certification; however, if the authorized house counsel begins employment with another business organization within 30 days of the termination or resignation and that business organization provides the certificate required for certification, the authorization to perform services under this chapter will continue;

(2) request by the business organization that the certification be withdrawn;

(3) request by the authorized house counsel that the certification be withdrawn;

(4) relocation of an authorized house counsel outside of Florida for a period greater than 180 days;

(5) disbarment or suspension from the practice of law, revocation of the authority to practice law, or involuntary placement on inactive status, by a court or other authorized agency of another state or foreign jurisdiction by a duly constituted organization overseeing the profession or having the ability to grant the authority to practice law or by a federal court; or

(6) the failure of authorized house counsel to comply with any provision of this rule.

(b) Notice to The Florida Bar by the Authorized House Counsel. Notice of 1 of the events set forth in this rule or a new certificate as provided in this rule must be filed with The Florida Bar by the authorized house counsel within 30 days after the event.

(c) Termination of Authorization. The Florida Bar will request that the clerk of the Supreme Court of Florida terminate the authorization under this chapter after The Florida Bar has received the notice required by subsection (a) of this rule. The Florida Bar will mail notice of the termination issued by the clerk to the authorized house counsel and to the business organization employing the authorized house counsel.

(d) Reapplication. An individual previously certified as an authorized house counsel may reapply for certification as long as the requirements of this chapter are met.

(e) Recertification. Individuals whose authorized house counsel status was terminated for failure to pay annual fees or complete continuing legal education or basic skills course requirements may be recertified in the same manner that delinquent members of The Florida Bar are reinstated, as provided elsewhere in these rules.

Added April 21, 1994 (635 So.2d 968). Amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 18, 1999 (746 So.2d 442); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.6 DISCIPLINE

(a) Termination of Authorization by Court. The Supreme Court of Florida may temporarily or permanently terminate an authorized house counsel's certification with cause at any time, in addition to any other proceeding or discipline that may be imposed by the Supreme Court of Florida under chapter 3 of these rules.

(b) Notification to Other States. The Florida Bar is authorized to notify each entity governing the practice of law in the state, territory, or the District of Columbia in which the authorized house counsel is licensed to practice law of any disciplinary action against the authorized house counsel.

Added April 21, 1994 (635 So.2d 968), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.7 OPEN/VACANT

Added April 21, 1994 (635 So.2d 968). Amended May 20, 2004 (SC03-705), deleted November 9, 2017, effective February 1, 2018 (SC16-1961).

RULE 17-1.8 AMENDMENT OR REVOCATION

The Supreme Court of Florida has the inherent power to amend or revoke this rule, in whole or in part, in accordance with the procedures for amending the Rules Regulating The Florida Bar.

Added April 21, 1994 (635 So.2d 968).

RULE 17-1.9 CONTINUING LEGAL EDUCATION REQUIREMENT

An individual certified as an authorized house counsel shall comply with rules 6-10.3, 6-10.4, and 6-12.3 of the Rules Regulating The Florida Bar unless the individual is eligible for an exemption to rule 6-12.3 pursuant to rule 6-12.4.

Added November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

CHAPTER 18. MILITARY LEGAL ASSISTANCE COUNSEL RULE
18-1. GENERALLY
RULE 18-1.1 PURPOSE

The purpose of this chapter is to expand the delivery of legal assistance services to military personnel stationed in the state of Florida. This chapter authorizes military lawyers licensed to practice law in jurisdictions other than Florida to be certified to practice before Florida courts while formally assigned as a legal assistance lawyers at a military base in the state of Florida. Nothing contained in this chapter limits the scope of practice or services provided by legal assistance lawyers under Title 10, United States Code, section 1044, and applicable service regulations.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended March 23, 2000 (763 So.2d 1002). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 18-1.2 DEFINITIONS

(a) Authorized Legal Assistance Lawyer. An “authorized legal assistance lawyer” is any person who:

(1) is admitted to practice law by the highest court of another state, the District of Columbia, or a territory of the United States;

(2) is serving on active duty within the Department of Defense (including the National Guard while in federal service) or the Department of Transportation (with respect to the United States Coast Guard);

(3) is assigned to an installation, unit, or activity located within the geographic limitations of the courts of the state of Florida;

(4) completes The Florida Bar Young Lawyers Division Practicing with Professionalism program (Basic Skills Course Requirement) within the time required by rule 6-1.3; and

(5) appears in connection with official duties as a legal assistance lawyer.

(b) Approved Legal Assistance Office. An “approved legal assistance office” for the purposes of this chapter is a military command tasked with providing legal assistance as approved by the Department of Defense or Department of Transportation.

(c) Supervising Lawyer. A “supervising lawyer” is a member in good standing of The Florida Bar who is eligible to practice law in Florida and who supervises an authorized legal assistance lawyer engaged in activities permitted by this chapter. The supervising lawyer must:

(1) be employed by or be a participating volunteer for an approved legal assistance office (to specifically include military reserve lawyers); and

(2) assume personal professional responsibility for supervising the conduct of the matter, litigation, or administrative proceeding in which the authorized legal assistance lawyer participates.

(d) Authorized Legal Assistance Client. An “authorized legal assistance client” is:

(1) an active duty military member who is assigned to an installation, unit, or activity located within the state of Florida and who otherwise meets current income eligibility guidelines of the Legal Services Corporation;

(2) a military retiree who resides within the state of Florida and who otherwise meets current income eligibility guidelines of the Legal Services Corporation;

(3) the dependents of any active duty military member or retiree who are otherwise residents of the state of Florida and meet current income eligibility guidelines of the Legal Services Corporation; or

(4) the surviving family members who are Florida residents of an active duty military member who died while in active military service for purposes of settling the deceased military member’s affairs.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended March 23, 2000 (763 So.2d 1002). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 18-1.3 ACTIVITIES

(a) Permissible Activities. An authorized legal assistance lawyer, in association with an approved legal assistance office and under the supervision of a supervising lawyer, may perform the following activities:

(1) appear in any court or before any administrative tribunal in this state on behalf of an authorized legal assistance client, provided the person on whose behalf the authorized legal assistance lawyer is appearing has consented in writing to that appearance and a supervising lawyer has given written approval for that appearance;

(2) prepare pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the authorized legal assistance lawyer is involved, provided all notices of appearance, pleadings, and documents bear the lawyer’s name, the name of the bar to which admitted, that jurisdiction’s bar number, and the legend “Rule 18 Military Legal Assistance Lawyer”; or

(3) engage in such other preparatory activities as are necessary for any matter in which the authorized legal assistance lawyer is involved.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended March 23, 2000 (763 So.2d 1002). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 18-1.4 SUPERVISION AND LIMITATIONS

(a) Supervision by Lawyer. An authorized legal assistance lawyer must perform all activities authorized by this chapter under the supervision of a supervising lawyer.

(b) Representation of Bar Membership Status. Authorized legal assistance lawyers permitted to perform services are not, and may not represent themselves to be, members in good standing of The Florida Bar licensed to practice law in this state.

(c) Range of Legal Issues for Which Representation is Permitted. An authorized legal assistance lawyer may appear in court on behalf of authorized legal assistance clients provided the appearance is made concerning a civil matter limited to the following actions:

- (1) all residential landlord/tenant disputes under applicable statutory law;
- (2) all actions in small claims court;
- (3) domestic relations matters limited solely to name changes, adoptions, paternity, dissolution, child custody, child/spousal support enforcement, or modification of prior judgments or orders;
- (4) routine or statutory probate matters limited solely to summary administration and disposition of property without administration under applicable statutory law;
- (5) all actions under the Florida Consumer Collection Practices Act; and
- (6) all actions under the Florida Motor Vehicle Repair Act; and
- (7) any other proceedings if otherwise permitted by applicable law regarding appearances by foreign lawyers.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended July 17, 1997 (697 So.2d 115); March 23, 2000 (763 So.2d 1002). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 18-1.5 CERTIFICATION

Permission for an authorized legal assistance lawyer to perform services will become effective on approval by the clerk of the Supreme Court of Florida. The person seeking approval must file the following:

(a) a letter from the commanding officer of the approved legal assistance office stating that the authorized legal assistance lawyer is currently assigned with that legal assistance office and that a Florida Bar member employed by or participating as a volunteer with that legal assistance office will assume the required duties of the supervising lawyer;

(b) a certificate from the highest court or agency in any state, territory, or district in which the authorized legal assistance lawyer is licensed to practice law certifying that the authorized

legal assistance lawyer is a member in good standing and has a clear disciplinary record, and advising of any pending complaints and/or investigations involving the authorized legal assistance lawyer; and

(c) a sworn statement by the authorized legal assistance lawyer that the lawyer:

(1) has read and will abide by chapter 4 of the Rules Regulating The Florida Bar as adopted by the Supreme Court of Florida;

(2) has completed or will complete The Florida Bar Young Lawyers Division Practicing with Professionalism program (Basic Skills Course Requirement) within the time required by rule 6-12.3; and

(3) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes, as defined by chapter 3 and rule 18-1.7 of the Rules Regulating The Florida Bar, and authorizes the practitioner's home state to be advised of any disciplinary action taken in Florida.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended July 17, 1997 (697 So.2d 115); March 23, 2000 (763 So.2d 1002). Amended May 21, 2015, corrected June 25, 2015, effective October 1, 2015 (SC14-2107).

RULE 18-1.6 WITHDRAWAL OR TERMINATION OF CERTIFICATION

(a) Cessation of Permission to Perform Services. Permission to perform services under this chapter shall cease immediately upon the earlier of the following events:

(1) the commanding officer of the approved legal assistance office filing a notice with the clerk of the Supreme Court of Florida stating that the authorized legal assistance attorney has ceased to be associated with the legal assistance office, which notice must be filed within 30 days after such association has ceased; or

(2) the filing with the clerk of the Supreme Court of Florida of a notice by the Supreme Court of Florida, in its discretion, at any time, stating that permission to perform services under this chapter has been revoked. A copy of such notice shall be mailed by the clerk of the Supreme Court of Florida to the authorized legal assistance attorney involved and to the approved legal assistance office to which the attorney had been certified. The decertified legal assistance attorney shall have 15 days upon receipt of notice to request reinstatement for good cause.

(b) Notice of Withdrawal of Certification. If an authorized legal assistance attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the authorized legal assistance attorney was involved.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended July 17, 1997 (697 So.2d 115); March 23, 2000 (763 So.2d 1002).

RULE 18-1.7 DISCIPLINE

(a) Contempt; Withdrawal of Certification. In addition to any appropriate proceedings and discipline that may be imposed by the Supreme Court of Florida under chapter 3 of the Rules Regulating The Florida Bar, the authorized legal assistance attorney shall be subject to the following disciplinary measures:

(1) the presiding judge or hearing officer for any matter in which the authorized legal assistance attorney has participated may hold the authorized legal assistance attorney in civil contempt for any failure to abide by such tribunal's order, in the same manner as any other person could be held in civil contempt; and

(2) the Supreme Court of Florida or the authorized legal assistance attorney may, at any time, with or without cause, withdraw certification hereunder.

(b) Notice to Home State of Disciplinary Action. The Florida Bar shall notify the appropriate authority in the authorized legal assistance attorney's home state of any disciplinary action taken against the authorized legal assistance attorney.

Added June 27, 1996, effective July 1, 1996 (677 So.2d 272). Amended July 17, 1997 (697 So.2d 115).

CHAPTER 19. CENTER FOR PROFESSIONALISM
RULE 19-1.1 PURPOSE

This rule is adopted in recognition of the importance of professionalism as the ultimate hallmark of the practice of law. The purpose of this rule is to create a center to identify and enunciate non-mandatory standards of professional conduct and encourage adherence thereto. These standards should involve aspirations higher than those required by the Rules of Professional Conduct.

Added Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 19-1.2 RESPONSIBILITY AND AUTHORITY

The center's responsibilities and authority shall be to:

- (a) consider efforts by lawyers and judges to improve the administration of justice;
- (b) examine ways of educating the public about the system of justice;
- (c) monitor and coordinate Florida's professionalism efforts in such institutional settings as its bar, courts, law schools, and law firms;
- (d) monitor professionalism efforts in jurisdictions outside Florida;
- (e) provide guidance and support to the continuing legal education department in its implementation and execution of the continuing legal education professionalism requirement;
- (f) help implement a professionalism component of the basic skills course requirement;
- (g) make recommendations to the supreme court and The Florida Bar concerning additional means by which professionalism can be enhanced;
- (h) receive and administer gifts and grants; and
- (i) assist in the implementation of the current professionalism enhancement program as it relates to professionalism issues.

Added Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 19-1.3 FUNDING

Funding for the center on professionalism shall be from The Florida Bar general fund and in such amounts as shall be established by the board of governors.

Added Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 19-1.4 STAFFING, OPERATION, AND REPORTING STRUCTURE

The center shall be staffed by employees of The Florida Bar.

The physical location of the center shall be determined by the board of governors and the operation and reporting structure of the center shall be consistent with other Florida Bar programs.

Added Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

RULE 19-1.5 RELATIONSHIP TO THE SUPREME COURT COMMISSION ON PROFESSIONALISM

The commission on professionalism has been established by administrative order of the Supreme Court of Florida and has been charged with the planning and implementation of an ongoing plan and policy to ensure that the fundamental ideals and values of the justice system and the legal profession are inculcated in all of those persons serving or seeking to serve in the system.

The center shall endeavor to assist the commission in this regard consistent with the center's funding, staffing, operational, and reporting structure.

Added Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179).

CHAPTER 20. FLORIDA REGISTERED PARALEGAL PROGRAM

20-1. PREAMBLE

RULE 20-1.1 PURPOSE

The purpose of this chapter is to set forth a definition that must be met in order to use the title paralegal, to establish the requirements to become a Florida Registered Paralegal, and to establish the requirements to maintain Florida Registered Paralegal status. This chapter is not intended to set forth the duties that a paralegal may perform because those restrictions are set forth in the Rules of Professional Conduct and various opinions of the Professional Ethics Committee. Nothing contained in this rule is deemed relevant in charging or awarding fees for legal services rendered by nonlawyers under the supervision of an employing or supervising lawyer, which are being based on the nature of the services rendered and not the title of the person rendering the services.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

20-2. DEFINITIONS

RULE 20-2.1 GENERALLY

For purposes of this chapter, the following terms have the following meaning:

(a) Paralegal. A paralegal is a person with education, training, or work experience, who works under the direction and supervision of an employing or supervising lawyer and who performs specifically delegated substantive legal work for which an employing or supervising lawyer is responsible.

(b) Florida Registered Paralegal. A Florida Registered Paralegal is someone who meets the definition of paralegal and the requirements for registration as set forth elsewhere in these rules.

(c) Paralegal Work and Paralegal Work Experience. Paralegal work and paralegal work experience are specifically delegated substantive legal work that is performed by a person with education, training, or work experience under the direction and supervision of an employing or supervising lawyer for which an employing or supervising lawyer is responsible. In order to qualify as paralegal work or paralegal work experience for purposes of meeting the eligibility and renewal requirements, the paralegal must primarily perform paralegal work and the work must be continuous and recent. Recent paralegal work for the purposes of meeting the eligibility and renewal requirements means work performed during the previous 5 years in connection with an initial registration, and during the preceding year in the case of a registration renewal. Time spent performing clerical work is specifically excluded.

(d) Approved Paralegal Program. An approved paralegal program is a program approved by the American Bar Association (ABA) or a program that is in substantial compliance with the ABA guidelines by being an institutional member of the American Association for Paralegal Education (AAfPE) and accredited by a nationally recognized accrediting agency approved by the United States Department of Education.

(e) Employing or Supervising Attorney. An employing or supervising lawyer is a member of The Florida Bar, authorized house counsel, foreign legal consultant, or military lawyer, as defined in the Rules Regulating The Florida Bar, having direct supervision over the work product of the paralegal or Florida Registered Paralegal.

(f) Board. The board is the Board of Governors of The Florida Bar.

(g) Respondent. A respondent is the individual whose conduct is under investigation.

(h) Designated Reviewer. The designated reviewer is a member of the board of governors appointed by the president of The Florida Bar from the district of the district paralegal committee and is responsible for review and other specific duties as assigned by the board of governors with respect to a particular district paralegal committee or matter. If a designated reviewer recuses or is unavailable, another board member from the district may be appointed by the president of The Florida Bar to serve as designated reviewer in that matter.

(i) Probable Cause. A finding of probable cause is a finding that there is cause to believe that a Florida Registered Paralegal is guilty of misconduct justifying disciplinary action.

(j) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234), amended November 9, 2017, effective February 1, 2018 (SC16-1961).

20-3. ELIGIBILITY REQUIREMENTS

RULE 20-3.1 REQUIREMENTS FOR REGISTRATION

In order to be a Florida Registered Paralegal under this chapter, an individual must meet 1 of the following requirements.

(a) Educational and Work Experience Requirements. A person may become a Florida Registered Paralegal by meeting 1 of the following education and paralegal work experience requirements:

(1) a bachelor's degree in paralegal studies from an approved paralegal program, plus a minimum of 1 year of paralegal work experience;

(2) a bachelor's degree or higher degree other than a juris doctorate from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 3 years of paralegal work experience;

(3) an associate's degree in paralegal studies from an approved paralegal program, plus a minimum of 2 years of paralegal work experience;

(4) an associate's degree from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 4 years of paralegal work experience;

(5) a juris doctorate degree from an American Bar Association accredited institution, plus a minimum of 1 year of paralegal work experience; or

(6) a juris doctorate degree from an American Bar Association accredited institution and membership in good standing with a state bar association other than Florida's, with no minimum paralegal work experience.

(b) Certification. A person may become a Florida Registered Paralegal by obtaining 1 of the following certifications:

(1) successful completion of the Paralegal Advanced Competency Exam (PACE certification as offered by the National Federation of Paralegal Associations "NFPA") and good standing with NFPA; or

(2) successful completion of the Certified Legal Assistant/Certified Paralegal examination (CLA/CP certification as offered by the National Association of Legal Assistants "NALA") and good standing with NALA.

(c) Grandfathering Reapplication. A paralegal who was registered under the grandfathering provision on or prior to March 1, 2011, who resigns or whose registration is revoked may reapply based on work experience alone. The paralegal must provide work experience as defined elsewhere in these rules for 5 of the 8 years immediately preceding the date of reapplication.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

20-4. REGISTRATION

RULE 20-4.1 GENERALLY

The following must be filed with The Florida Bar by an individual seeking to be registered as a Florida Registered Paralegal:

(a) Educational, Certification, or Experience Requirement.

(1) evidence that the individual has satisfied the requirements of rule 20-3.1(a) by supplying evidence of the degree and attestation from the employing or supervising lawyer showing that the individual has the appropriate paralegal work experience; or

(2) a certificate showing that the individual has obtained 1 of the certifications set forth in rule 20-3.1(b) and attestation from the employing or supervising lawyer(s) showing that the individual is currently primarily performing paralegal work.

(b) Statement of Compliance. A sworn statement by the individual that the individual has read and will abide by the Code of Ethics and Responsibility set forth elsewhere in this chapter.

(c) Registration Fee. An appropriate registration fee set by the board.

(d) Review by The Florida Bar. Upon receipt of the items set forth in subdivision 20-4.1(a)-(c), The Florida Bar will review the items for compliance with this chapter. Any incomplete submissions will be returned. If the individual meets all of the requirements of this chapter, the individual will be added to the roll of Florida Registered Paralegals and a certificate evidencing such registration will be issued. If there is an open unlicensed practice of law complaint against the individual, the application will be held as pending until the investigation is resolved.

(e) Annual Renewal; Content and Registration Fee. Except as provided elsewhere in this rule, the registration pursuant to this subdivision will be annual and consistent with that applicable to a lawyer licensed to practice in the state of Florida. An annual registration fee will be set by the board in an amount not more than the annual fees paid by inactive members of The Florida Bar. The renewal must contain a statement that the individual is primarily performing paralegal work as defined elsewhere in this chapter and a statement that the individual is not ineligible for registration set forth elsewhere in this chapter. A Florida Registered Paralegal who is not primarily performing paralegal work is not eligible for renewal of the registration but may reapply for registration. If there is an open unlicensed practice of law complaint against the individual, the renewal will be held as pending until the investigation is resolved.

(f) Installment Payment of Renewal Fee. If a Florida Registered Paralegal is employed by a federal, state, or local government, the Florida Registered Paralegal may elect to pay their annual renewal fee in 3 equal installments. The Florida Registered Paralegal's notice of election to pay the renewal fee in installments under this rule and the first installment payment must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and third installment payments postmarked after their respective due date(s) are subject to a one-time late charge of \$50 per fiscal year, which shall accompany the final payment.

The Florida Bar will send written notice by registered or certified mail to the last official address of each Florida Registered Paralegal whose renewal fee and late fee have not been paid under this rule by February 1. Upon failure to pay renewal fees and any late charges under this rule by March 15, the individual's status as a Florida Registered Paralegal will be revoked.

(g) Renewal Fee Exemption for Activated Reserve Members of the Armed Services. Florida Registered Paralegals engaged in reserve military service in the Armed Forces of the United States who are called to active duty for 30 days or more during the bar's fiscal year are exempt from the payment of the annual renewal fee required under this rule. For purposes of this rule, the Armed Forces of the United States includes the United States Army, Air Force, Navy, Marine Corps, Coast Guard, as well as the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and

the Coast Guard Reserve. Requests for an exemption must be made within 15 days before the date renewal fees are due each year or within 15 days of activation to duty of a reserve member. To the extent renewal fees were paid despite qualifying for this exemption, such renewal fee will be reimbursed by The Florida Bar within 30 days of receipt of a Florida Registered Paralegal's request for exemption. Within 30 days of leaving active duty status, the Florida Registered Paralegal must report to The Florida Bar that he or she is no longer on active duty status in the United States Armed Forces.

The Florida Bar will send written notice by registered or certified mail to the last official address of each Florida Registered Paralegal whose renewal fee and late fee have not been paid under this rule by February 1. Upon failure to pay renewal fees and any late charges under this rule by March 15, the individual's status as an Florida Registered Paralegal will be revoked. Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

20-5. INELIGIBILITY FOR REGISTRATION OR RENEWAL

RULE 20-5.1 GENERALLY

The following individuals are ineligible for registration as a Florida Registered Paralegal or for renewal of a registration that was previously granted:

- (a) a person who is currently suspended or disbarred or who has resigned in lieu of discipline from the practice of law in any state or jurisdiction;
- (b) a person who has been convicted of a felony in any state or jurisdiction and whose civil rights have not been restored;
- (c) a person who has been found to have engaged in the unlicensed (unauthorized) practice of law in any state or jurisdiction within 7 years of the date of application;
- (d) a person whose registration or license to practice has been terminated or revoked for disciplinary reasons by a professional organization, court, disciplinary board, or agency in any jurisdiction;
- (e) a person who is no longer primarily performing paralegal work as defined elsewhere in these rules;
- (f) a person who fails to comply with prescribed continuing education requirements as set forth elsewhere in this chapter; or
- (g) a person who is providing services directly to the public as permitted by case law and subchapter 10-2 of these rules.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360). Amended April 12, 2012, effective July 1, 2012 (SC10-1967).

RULE 20-5.2 DUTY TO UPDATE

An individual applying for registration as a Florida Registered Paralegal or who is registered as a Florida Registered Paralegal has a duty to inform The Florida Bar promptly of any fact or circumstance that would render the individual ineligible for registration or renewal, and The Florida Bar will notify the employing or supervising lawyer as defined elsewhere in this chapter of any changes to the registration status.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

20-6. CONTINUING EDUCATION

RULE 20-6.1 GENERALLY

Florida Registered Paralegals must complete a minimum of 33 hours of continuing education every 3 years, 5 hours of which must be in legal ethics or professionalism and 3 hours of which must be in technology. Acceptable courses include those approved for credit by The Florida Bar, the National Association of Legal Assistants (NALA), or the National Federation of Paralegal Associations (NFPA). A Florida Registered Paralegal who resigns or whose status has been revoked but is otherwise eligible for re-registration must complete at least 11 hours of continuing education for each year the Florida Registered Paralegal was previously registered in order to be eligible for re-registration. The new registration will be revoked unless the continuing education hours are completed before the re-registration application and posted on The Florida Bar website within 30 days of the effective date of the re-registration. The Florida Registered Paralegal will be given a new 3-year continuing education cycle on re-registration.

Comment

Continuing education is an important component of the Florida Registered Paralegal program and necessary to maintain the status of a Florida Registered Paralegal. If a Florida Registered Paralegal resigns or has had the paralegal's status revoked at the end of a continuing education cycle without completing the necessary hours, the paralegal must show that the paralegal has completed a minimum of 11 hours of continuing education for each year of the immediately preceding term that the paralegal was registered. For example, if the paralegal was registered for 2 years, the paralegal must complete at least 22 hours of continuing education in order to re-register. The courses must be completed prior to the date the paralegal reapplies for Florida Registered Paralegal status. As an example, assume that a Florida Registered Paralegal was given a continuing education cycle that ran from January 1, 2011, to January 1, 2014, and the Florida Registered Paralegal resigned or had the paralegal's status revoked in October 2013. If the paralegal reapplies for Florida Registered Paralegal status in February 2014, the paralegal must show 22 hours of continuing education credit completed between January 1, 2011, to January 1, 2014, to be eligible to re-register. Because a Florida Registered Paralegal must enter all course credits on The Florida Bar's website and access to the portion of the website where credits are posted is not available during the period the paralegal was not registered, the Florida Registered Paralegal will have 30 days after re-registration to enter the credits. Failure to timely enter the credits will result in the Florida Registered Paralegal's status being revoked. The Florida Registered Paralegal will be given a new continuing education cycle on re-registration.

The purpose of this rule is to ensure that Florida Registered Paralegals continue their education. This is meant to avoid a situation where a Florida Registered Paralegal has not completed the continuing education requirement, resigns, and then re-registers with a new 3-year cycle, having failed to complete the requisite hours when previously registered.

If a Florida Registered Paralegal resigns or has the paralegal's status revoked during the continuing education cycle, the cycle will not reset. For example, assume a Florida Registered Paralegal has a continuing education cycle beginning January 1, 2011 and ending January 1, 2014. The Florida Registered Paralegal's status is revoked in October 2012, for failure to pay the annual renewal. If the paralegal reapplies and is re-registered in December 2012, the continuing education cycle will remain the same, and the Florida Registered Paralegal will have until January 1, 2014, to complete the necessary hours.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360); amended May 29, 2014, effective June 1, 2014 (SC12-2234); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

20-7. CODE OF ETHICS AND RESPONSIBILITY

RULE 20-7.1 GENERALLY

A Florida Registered Paralegal shall adhere to the following Code of Ethics and Responsibility:

(a) Disclosure. A Florida Registered Paralegal shall disclose his or her status as a Florida Registered Paralegal at the outset of any professional relationship with a client, lawyers, a court or administrative agency or personnel thereof, and members of the general public. Use of the initials FRP meets the disclosure requirement only if the title paralegal also appears. For example, J.Doe, FRP, Paralegal. Use of the word "paralegal" alone also complies.

(b) Confidentiality and Privilege. A Florida Registered Paralegal shall preserve the confidences and secrets of all clients. A Florida Registered Paralegal must protect the confidences of a client, and it shall be unethical for a Florida Registered Paralegal to violate any statute or rule now in effect or hereafter to be enacted controlling privileged communications.

(c) Appearance of Impropriety or Unethical Conduct. A Florida Registered Paralegal should understand the attorney's Rules of Professional Conduct and this code in order to avoid any action that would involve the attorney in a violation of the rules or give the appearance of professional impropriety. It is the obligation of the Florida Registered Paralegal to avoid conduct that would cause the lawyer to be unethical or even appear to be unethical, and loyalty to the lawyer is incumbent upon the Florida Registered Paralegal.

(d) Prohibited Conduct. A Florida Registered Paralegal should not:

(1) establish attorney-client relationships, accept cases, set legal fees, give legal opinions or advice, or represent a client before a court or other tribunal, unless authorized to do so by the court or tribunal;

(2) engage in, encourage, or contribute to any act that could constitute the unlicensed practice of law;

(3) engage in the practice of law;

(4) perform any of the duties that attorneys only may perform nor do things that attorneys themselves may not do; or

(5) act in matters involving professional legal judgment since the services of an attorney are essential in the public interest whenever the exercise of such judgment is required.

(e) Performance of Services. A Florida Registered Paralegal must act prudently in determining the extent to which a client may be assisted without the presence of an attorney. A Florida Registered Paralegal may perform services for an attorney in the representation of a client, provided:

(1) the services performed by the paralegal do not require the exercise of independent professional legal judgment;

(2) the attorney is responsible for the client, maintains a direct relationship with the client, and maintains control of all client matters;

(3) the attorney supervises the paralegal;

(4) the attorney remains professionally responsible for all work on behalf of the client and assumes full professional responsibility for the work product, including any actions taken or not taken by the paralegal in connection therewith; and

(5) the services performed supplement, merge with, and become the attorney's work product.

(f) Competence. A Florida Registered Paralegal shall work continually to maintain integrity and a high degree of competency throughout the legal profession.

(g) Conflict of Interest. A Florida Registered Paralegal who was employed by an opposing law firm has a duty not to disclose any information relating to the representation of the former firm's clients and must disclose the fact of the prior employment to the employing attorney.

(h) Reporting Known Misconduct. A Florida Registered Paralegal having knowledge that another Florida Registered Paralegal has committed a violation of this chapter or code shall inform The Florida Bar of the violation.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360) ; amended July 7, 2011, effective October 1, 2011 (SC10-1968).

20-8. REVOCATION OF REGISTRATION

The following rules and procedures shall apply to complaints against Florida Registered Paralegals:

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.1 PARALEGAL COMMITTEES

There shall be paralegal committees as are herein provided, each of which shall have the authority and jurisdiction required to perform the functions hereinafter assigned to the paralegal committee and which shall be constituted and appointed as follows:

(a) District Paralegal Committees. There shall be at least 1 paralegal committee for each appellate district of this state and as many more as shall be found desirable by the board. Such committees shall be continuing bodies notwithstanding changes in membership, and they shall have jurisdiction and the power to proceed in all matters properly before them.

(b) Membership, Appointment, and Eligibility. Each district paralegal committee shall consist of not fewer than 3 members, at least 1 of whom is a Florida Registered Paralegal and at least 1 of whom is a member of The Florida Bar. Members of district paralegal committees shall be nominated by the member of the board designated to review the actions of the committee and appointed by the board. All appointees shall be of legal age and shall be residents of the district or have their principal office in the district. For each district paralegal committee there shall be a chair designated by the designated reviewer of that committee. A vice-chair and secretary may be designated by the chair of each district committee.

(c) Terms. The terms of the members shall be for 3 years from the date of administration of the oath of service on the district paralegal committee or until such time as their successors are appointed and qualified. Continuous service of a member shall not exceed 6 years. A member shall not be reappointed for a period of 3 years after the end of the member's second term provided, however, the expiration of the term of any member shall not disqualify such member from concluding any investigation or participating in the disposition of cases that were pending before the committee when the member's term expired.

(d) Disqualification. No member of a district paralegal committee shall perform any district paralegal committee function when that member:

- (1) is related by blood or marriage to the complainant or respondent;
- (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
- (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
- (4) is prejudiced or biased toward either the complainant or the respondent.

Upon notice of the above prohibitions, the affected members should recuse themselves from further proceedings. The district paralegal committee chair shall have the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

(e) Removal. Any member may be removed from service by the designated reviewer of that committee or by the board.

(f) District Paralegal Committee Meetings. District paralegal committees should meet at regularly scheduled times, not less frequently than quarterly each year, and either the chair or vice-chair may call special meetings.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.2 DUTIES AND AUTHORITY

It is the duty of the district paralegal committees to receive and evaluate complaints against Florida Registered Paralegals. The district paralegal committees shall have the authority to remove or revoke an individual's registration as a Florida Registered Paralegal in accordance with the procedures set forth elsewhere in this chapter. A registration certificate issued pursuant to these rules may be suspended or revoked for any of the following reasons:

(a) conviction of a felony or of a misdemeanor involving moral turpitude, dishonesty, or false statement;

(b) fraud, dishonesty, or corruption that is related to the functions and duties of a Florida Registered Paralegal;

(c) gross incompetence or unprofessional or unethical conduct;

(d) willful, substantial, or repeated violation of any duty imposed by statute, rule, or order of court;

(e) fraud or misrepresentation in obtaining or renewing registration status;

(f) noncompliance with continuing education requirements;

(g) nonpayment of renewal fees; or

(h) violation of the Code of Ethics and Responsibility set forth elsewhere in these rules.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.3 COMPLAINT PROCESSING

(a) Complaints. All complaints against a Florida Registered Paralegal may be initiated either by a sworn complaint asserting a violation of these rules or by The Florida Bar on its own motion.

(b) Review by Bar Counsel. Bar counsel must review the complaint and determine whether the alleged conduct, if proven, would constitute a violation of these rules. Bar counsel may conduct a preliminary, informal investigation to aid in this determination and, if necessary, may employ a Florida Bar staff investigator to aid in the preliminary investigation. If bar counsel determines that the facts, if proven, would not constitute a violation, bar counsel may decline to pursue the complaint. The complainant must be notified of a decision not to pursue a complaint including the reasons for not pursuing the complaint.

(c) Closing by Bar Counsel and Committee Chair. Bar counsel may consult with the appropriate district paralegal committee chair to determine whether the alleged conduct of a complaint, if proven, would constitute a violation of these rules. If bar counsel and the district committee chair concur in a finding that the case should be closed, the complaint may be closed without referral to the district paralegal committee.

(d) Referral to District Paralegal Committee. Bar counsel may refer a file to the appropriate district paralegal committee for further investigation or action as authorized elsewhere in these rules.

(e) Notification of Violation. If a majority of the district paralegal committee finds probable cause to believe that a violation of these rules has occurred, bar counsel or the chair of the district paralegal committee will send written notice to the Florida Registered Paralegal identifying the committee finding and the alleged violation and the Florida Registered Paralegal must notify their supervising lawyer of the complaint. The notice will be sent by certified U.S. mail directed to the last mailing address on file.

(f) Response to Notice of Violation. The Florida Registered Paralegal must file a written response within 30 days of receipt of the notification. If the Florida Registered Paralegal does not respond, the violations identified in the finding of probable cause are deemed admitted.

(g) Committee Review. The district paralegal committee must review the complaint, the finding of probable cause, any response filed, and any other pertinent materials after either the filing of a written response by the Florida Registered Paralegal or the expiration of the time to file a response. The Committee must decide whether to dismiss the proceeding or issue a proposed disposition. The committee must promptly send written notice of its decision to the Florida Registered Paralegal by certified U.S. mail directed to the last mailing address on file.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 20-8.4 INVESTIGATION

(a) Conduct of Proceedings. The proceedings of district paralegal committees when testimony is taken may be informal in nature and the committees shall not be bound by the rules of evidence.

(b) Taking Testimony. Bar counsel, each district paralegal committee, and members thereof conducting investigations are empowered to take and have transcribed the testimony and evidence of witnesses. If the testimony is recorded stenographically or otherwise, the witness shall be sworn by any person authorized by law to administer oaths.

(c) Rights and Responsibilities of Respondent. The respondent may be required to appear and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel.

(d) Rights of Complaining Witness. The complaining witness is not a party to the investigation. The complainant may be granted the right to be present at any district paralegal committee proceeding when the respondent is present before the committee to give testimony. The complaining witness shall have no right to appeal the finding of the district paralegal committee.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.5 SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence before a district paralegal committee shall be issued as follows:

(a) District Paralegal Committees. Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued by the chair or vice-chair of a district paralegal committee in pursuance of an investigation authorized by the committee.

(b) Bar Counsel Investigations. Subpoenas for the attendance of witnesses and the production of documentary evidence before bar counsel when bar counsel is conducting an initial investigation shall be issued by the chair or vice-chair of a district paralegal committee to which the matter will be assigned.

(c) Service. Subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.6 DISPOSITION OF COMPLAINTS

On concluding its investigation, the district paralegal committee will determine which of the following action(s) should be taken:

- (a) close the matter on a finding of no violation;
- (b) close the matter with a letter of advice;
- (c) require completion of a specified continuing education course;
- (d) accept an affidavit from the Florida Registered Paralegal acknowledging that the conduct surrounding the complaint was a violation of these rules and that the Florida Registered Paralegal will refrain from conduct that would create a violation of these rules;
- (e) suspend the Florida Registered Paralegal's registration certificate for a period not to exceed 1 year;
- (f) revoke the Florida Registered Paralegal's registration certificate; or
- (g) deny the Florida Registered Paralegal's request for renewal.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

RULE 20-8.7 REVIEW OF DISTRICT PARALEGAL COMMITTEE ACTION

(a) Review by the Designated Reviewer. Notice of district paralegal committee action recommending either revocation or denial of renewal shall be given to the designated reviewer for review. Upon review of the district paralegal committee action, the designated reviewer may affirm the action of the district paralegal committee, request the district paralegal committee to reconsider its action, or refer the district paralegal committee action to the disciplinary review committee of the board of governors for its review. The request for a district paralegal committee reconsideration or referral to the disciplinary review committee shall be in writing and must be made within 30 days of notice of the district paralegal committee action. If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the district paralegal committee action shall become final.

(b) Review by Disciplinary Review Committee. The disciplinary review committee shall review those district paralegal committee matters referred to it by a designated reviewer or the district paralegal committee and shall make a report to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee shall be final unless overruled by the board.

(c) Board Action on Recommendations of the Disciplinary Review Committee. On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part.

(d) Notice of Board Action. Bar counsel shall give notice of board action to the respondent, complainant, and district paralegal committee.

(e) Filing Service on Board of Governors. All matters to be filed with or served upon the board shall be addressed to the board of governors and filed with the executive director. The executive director shall be the custodian of the official records of the Florida Registered Paralegal Program.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

RULE 20-8.8 FILES

(a) Files Are Property of Bar. All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records of other proceedings under these rules are property of The Florida Bar.

(b) Investigatory Record. The investigatory record shall consist of the record before a district paralegal committee and any reports, correspondence, papers, and recordings and transcripts of hearings and transcribed testimony furnished to, served on, or received from the respondent or the complainant or a witness before the district paralegal committee. The record before the district paralegal committee shall consist of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of district paralegal committee meetings or transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken.

(c) Limitations on Disclosure. Any material provided to or promulgated by The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the investigatory record, that portion of the investigatory record may be sealed by the district paralegal committee chair.

(d) Disclosure of Information. Unless otherwise ordered by a court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Response to Inquiry. Representatives of The Florida Bar, authorized by the board, shall reply to inquiries regarding a pending or closed investigation. The Florida Bar may charge a reasonable fee for copying documents consistent with applicable law.

(f) Production of Investigatory Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the investigatory record even if otherwise deemed confidential under these rules. The Florida Bar may charge a reasonable fee for copying the documents consistent with applicable law.

(g) Response to False or Misleading Statements. If public statements that are false and misleading are made about any investigation brought pursuant to this chapter, The Florida Bar

may make any disclosure consistent with applicable law necessary to correct such false or misleading statements.

(h) Providing Material to Other Agencies. Nothing contained herein shall prohibit The Florida Bar from providing material to any state or federal law enforcement or regulatory agency, United States Attorney, state attorney, the National Association of Legal Assistants or the National Federation of Paralegal Associations and equivalent organizations, the Florida Board of Bar Examiners and equivalent entities in other jurisdictions, paralegal grievance committees and equivalent entities in other jurisdictions, and unlicensed practice of law committees and equivalent entities in other jurisdictions.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

20-9. IMMUNITY

RULE 20-9.1 GENERALLY

The members of the district paralegal committees, the board, bar staff and counsel assisting the committees, shall have absolute immunity from civil liability for all acts in the course of their official duties.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

20.10. AMENDMENTS

RULE 20-10.1 GENERALLY

Rules governing the Florida Registered Paralegal Program may be amended in accordance with the procedures set forth elsewhere in these rules.

Added November 15, 2007, effective March 1, 2008, (SC06-1622), (969 So.2d 360).

CHAPTER 21 MILITARY SPOUSE AUTHORIZATION TO ENGAGE IN THE PRACTICE OF LAW IN FLORIDA

21-1 Preamble

RULE 21-1.1 PURPOSE

The Supreme Court of Florida may certify a lawyer who is the spouse of a full-time active duty member of the United States armed forces to engage in the practice of law in Florida while the lawyer's spouse is stationed within this jurisdiction, due to the unique mobility requirements of military families who support the defense of the United States. A lawyer certified under this chapter is considered a member of the Florida Bar during the period of certification.

Added July 19, 2018, effective September 17, 2018, (SC18-158).

21-2 ELIGIBILITY REQUIREMENTS

RULE 21-2.1 ELIGIBILITY

To be eligible for certification under this chapter, the applicant must:

(a) be identified and enrolled in the Department of Defense "Defense Enrollment Eligibility Reporting System" (or identified and enrolled by the Department of Homeland Security for the Coast Guard when not operating as a service of the Navy) as the spouse of a full-time active duty member of the United States armed forces or a member of the Guard or Reserve components who is ordered to extended active duty under Title 10 of the U.S. Code and transferred from outside Florida to a duty station in Florida;

(b) hold a J.D. or LL.B. degree from a law school accredited by the American Bar Association at the time the applicant matriculated or graduated;

(c) have been admitted after passing a written examination to the practice of law in another United States jurisdiction;

(d) be an active member of the bar in good standing who is eligible to practice law in at least 1 United States jurisdiction;

(e) be a member of the bar in good standing in every jurisdiction to which the applicant has been admitted to practice law;

(f) establish that the applicant is not subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(g) not have failed the Florida Bar examination within 5 years of the date of application under this chapter or previously been denied admission to The Florida Bar for reasons of character and fitness;

(h) reside in Florida with the service member stationed in Florida or provide evidence that the applicant intends to reside in Florida with the service member stationed in Florida within 6 months of the application;

(i) certify having read the Florida Rules of Discipline, the Florida Rules of Professional Conduct and this chapter and agree to submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(j) submit an application to the Florida Board of Bar Examiners in the form required by that board, including a copy of the military member's orders to a duty station within Florida;

(k) pay an application fee established by the Florida Board of Bar Examiners; and

(l) establish the applicant's qualifications as to character and fitness to the satisfaction of the Florida Board of Bar Examiners.

Added July 19, 2018, effective September 17, 2018, (SC18-158).

21-3 CONTINUING LEGAL EDUCATION REQUIREMENTS

RULE 21-3.1 CONTINUING LEGAL EDUCATION

(a) Basic Skills Course Requirement. A lawyer certified to practice law in Florida as a military spouse must complete the basic skills course requirement as set forth in subchapter 6-12 of these rules within 6 months of initial certification.

(b) Exemption and Deferment. A lawyer certified to practice law in Florida as a military spouse is not eligible for exemption from or deferral of the basic skills course requirement.

(c) Minimum Ongoing Requirement. A lawyer certified to practice law in Florida as a military spouse must complete 10 hours of continuing legal education during each year the authorization is renewed, including 2 hours of ethics each year.

Added July 19, 2018, effective September 17, 2018, (SC18-158).

21-4 PERMISSIBLE ACTIVITIES AND PRACTICE REQUIREMENT

RULE 21-4.1 ACTIVITIES AND REQUIREMENT

(a) Generally. Except as provided elsewhere in this chapter, lawyers certified to practice law in Florida as military spouses are entitled to all privileges, rights, and benefits and subject to all duties, obligations, and responsibilities of members of the Florida Bar in good standing and eligible to practice law in Florida.

(b) Required Association with Florida Bar Member. A lawyer certified under this chapter must be employed by or in a mentorship relationship with a member of The Florida Bar who is eligible to practice law in Florida. The Military Affairs Committee will establish a mentor network for this purpose and may appoint its own committee members or other members of The Florida Bar as mentors.

Added July 19, 2018, effective September 17, 2018, (SC18-158).

21-5 RENEWAL
RULE 21-5.1 ANNUAL RENEWAL

The authorization under this chapter is annual. Every member of the Florida Bar certified as a military spouse lawyer must pay annual membership fees equal to those paid by active members of the Florida Bar, must provide The Florida Bar with a statement that the certified lawyer continues to be eligible under this subchapter, and must provide any other information required by The Florida Bar.

Added July 19, 2018, effective September 17, 2018, (SC18-158).

21-6 TERMINATION
RULE 21-6.1 TERMINATION

(a) Termination Due to Change in Status.

(1) *Generally.* The certification to practice law under this chapter will terminate if:

(A) the service member is no longer an active duty member of the United States armed forces;

(B) the certified lawyer is no longer married to the service member;

(C) the service member receives a permanent transfer outside of Florida, except that the certified lawyer may continue to practice pursuant to this chapter if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized until the service member is assigned to a location with dependents authorized;

(D) the certified lawyer relocates outside of Florida for more than 6 continuous months;

(E) the certified lawyer requests that the certification be terminated;

(F) five years have elapsed since the certified lawyer was certified; or

(G) the certified lawyer becomes a member of The Florida Bar by meeting all admission requirements to The Florida Bar.

(2) *Notice.* Except on becoming a Florida Bar member by meeting all admission requirements, the certified lawyer must notify The Florida Bar in writing of any of the above events within 30 days of its occurrence, must simultaneously file in each matter pending before any court or tribunal a notice that the lawyer will no longer be involved in the case, and must provide written notice to all clients receiving representation from the lawyer that the lawyer will no longer represent them. The Florida Bar will notify the Supreme Court of Florida and request that the certification be terminated.

(b) Termination for Cause.

(1) *Generally.* The certification to practice law under this chapter will terminate if the certified lawyer:

(A) fails to pay the annual renewal as required elsewhere in this chapter;

(B) fails to meet the continuing education requirement as required elsewhere in this chapter;

(C) takes and fails the Florida Bar Examination or the character and fitness investigation; or

(D) is disbarred or suspended by another jurisdiction.

(2) *Notice.* The Florida Bar will provide written notification to the certified lawyer and the Supreme Court of Florida of any of the above events within 30 days of its occurrence. On termination the lawyer must file in each matter pending before any court or tribunal a notice that the lawyer will no longer be involved in the case and must provide written notice to all of the lawyer's clients that the lawyer will no longer represent them.

Added July 19, 2018, effective September 17, 2018, (SC18-158).