

## **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.