

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).

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).