

IN THE SUPREME COURT OF FLORIDA

FILED  
D. J. WHITE

MAY 6 1987

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

IN RE: PETITION TO AMEND THE  
RULES REGULATING THE FLORIDA  
BAR

CASE NO. 70,502

\_\_\_\_\_ /

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

The Board of Governors of The Florida Bar hereby petitions the Supreme Court of Florida, pursuant to Rule 1-12.1, Rules Regulating The Florida Bar, to amend the Rules Regulating The Florida Bar and shows:

1. Official notice of filing this petition has been published in the April 1, 1987 edition of The Florida Bar News, as required by Rule 1-12.1, Rules Regulating The Florida Bar.

A copy of the official notice is attached hereto as Exhibit 1.

2. The amendments proposed in this petition have been approved by the Board of Governors of The Florida Bar.

3. The proposed amendments to Chapter 10, Rules Governing The Investigation And Prosecution Of The Unlicensed Practice Of Law, relate to the definition of the unlicensed practice of law.

Existing Rule 10-7.1(a)(5) defines UPL as "The unlicensed practice of law, as prohibited by statute, court rule, and case law of the State of Florida."

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exhibits 1-17  
2/11/87

The proposed amendment to Chapter 10, Rules Governing The Investigation And Prosecution Of The Unlicensed Practice Of Law, would delete Rule 10-7.1(a)(5) from Rule 10-7 Advisory opinions and transfer it to existing Rule 10-1.1 as Rule 10-1.1(b).

Along with changing the placement of the rule defining UPL [existing Rule 10-7.1(a)(5)], the proposed amendment would add language to the rule which would exempt certain conduct from constituting the unlicensed practice of law. The proposed addition to the existing rules would read as follows:

. . . For purposes of this chapter, it shall not constitute the unlicensed practice of law for nonlawyers to engage in limited oral communications to assist individuals in the completion of legal forms approved by the Supreme Court of Florida. Oral communications by nonlawyers is restricted to those communications essential to elicit factual information necessary for the completion of the form(s) and inform the individual how to file such form(s).

The Florida Bar submits the proposed amendment is necessary to help provide better access to the courts for those who are unable to afford an attorney or represent themselves without assistance.

This Court, in The Florida Bar v. Brumbaugh, 355 So.2d 1188 (Fla. 1978), carefully outlined those services nonlawyers could provide without engaging in the unlicensed practice of law. The Court's holding may be summarized as permitting nonlawyers to 1) sell "printed material purporting to explain legal practice and procedure to the public in general" and sample legal forms and 2) operate secretarial services and type forms for customers, if typists only copy the information given to them in writing by customers.

The Florida Bar v. Brumbaugh does not allow nonlawyers to engage in advising clients as to remedies available to them or otherwise assist in the preparation of legal forms. No personal legal assistance by the nonlawyer form seller is permitted, including the correction of errors and omissions.

The rule change proposed by The Florida Bar would permit nonlawyers to engage in those oral communications essential to elicit factual information necessary for the completion of forms approved by the Supreme Court of Florida and to inform the individual how to file such forms. However, personal contact between the service providing such forms and the customer, in the nature of consultation, explanation, recommendation, or advice will continue to be prohibited.

This Court, in Brumbaugh, restated its position of not attempting to formulate an all-encompassing definition of the practice of law in the interests of maintaining flexibility in the face of continuing changes in the business and social order. Brumbaugh at 1192, citing State Bar of Michigan v. Cramer, 249 N.W.2d 7.

The Florida Bar submits that a relaxing of the definition of unlicensed practice of law, as set out in the proposed amendment, would be beneficial as it will provide better access to the courts for those who most need it while continuing to provide protection for the public from those incompetent to give legal advice.

A copy of Chapter 10, Rules Governing The Investigation And Prosecution Of Unlicensed Practice Of Law, containing the proposed deletion, amendment and addition, is attached hereto as Exhibit 2.

4. The Florida Bar hereby requests oral argument on the proposed amendments included herein.

Respectfully submitted,



John F. Harkness, Jr.  
Executive Director  
Joseph J. Reiter, President  
Ray Ferrero, jr., President-elect  
Steven J. Uhlfelder, Chairman  
Board Committee on Access to the  
Legal System  
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EXHIBIT 1

Exhibit  
1

**UPL definition, Investigation, prosecution**

The Florida Bar gives notice pursuant to Rule 1-12.1, Rules Regulating The Florida Bar, of amendment to Rule 10-1.1(b), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, as follows:

10-1.1 Generally

.....

(b) Definition.

(1) UPL. *The unlicensed practice of law, as prohibited by statute, court rule, and case law of the State of Florida. For purposes of this chapter, it shall not constitute the unlicensed practice of law for nonlawyers to engage in limited oral communication to assist individuals in the completion of legal forms approved by the Supreme Court of Florida. Oral communication by nonlawyers is restricted to those communications essential to elicit factual information necessary for the completion of the forms(s) and inform the individual how to file such form(s).*

Rule 10-7.1(a)(5), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, has been deleted and included in Rule 10-1.1(b), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law.

The Florida Bar gives notice pursuant to Rule 1-12.1, Rules Regulating The Florida Bar, of intention to file a petition for amendment to Rule 10-1.1(b) of the Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, together with a copy of the proposed amendment on May 4, 1987.

EXHIBIT 2

1 Chapter 10

2 RULES GOVERNING THE INVESTIGATION AND  
3 PROSECUTION OF THE UNLICENSED PRACTICE OF LAW

4 10-1 Jurisdiction.

5 10-1.1 Generally.

6 (a) Pursuant to the provisions of article V, section 15, of  
7 the Florida Constitution, the Supreme Court of Florida has inherent  
8 jurisdiction to prohibit the unlicensed practice of law. All  
9 references herein to "the Court" shall mean the Supreme Court of  
10 Florida.

11 (b) Definition.

12 1. UPL. The unlicensed practice of law, as prohibited  
13 by statute, court rule, and case law of the State of Florida. For  
14 purposes of this chapter, it shall not constitute the unlicensed  
15 practice of law for nonlawyers to engage in limited oral  
16 communications to assist individuals in the completion of legal  
17 forms approved by the Supreme Court of Florida. Oral communications  
18 by nonlawyers is restricted to those communications essential to  
19 elicit factual information necessary for the completion of the  
20 form(s) and inform the individual how to file such form(s).

21 ~~(b)~~ (c) The Florida Bar, as an official arm of the Court,  
22 is charged with the duty of considering, investigating, and seeking  
23 the prohibition of matters pertaining to the unlicensed practice of  
24 law and the prosecution of alleged offenders. The Court shall



25 establish a standing committee on the unlicensed practice of law and  
26 at least one circuit committee on unlicensed practice of law in each  
27 judicial circuit.

28 ~~(e)~~ (d) The standing committee shall be appointed by the  
29 Court on advice of the board of governors of The Florida Bar and  
30 shall consist of at least fifteen (15) members, not less than five  
31 (5) of whom shall be nonlawyers. It shall be the duty of the  
32 standing committee to receive and evaluate circuit committee reports  
33 and make its findings and recommendations to the board of governors.  
34 The board of governors shall act upon said reports, findings and  
35 recommendations and determine whether or not litigation should be  
36 instituted in the court against any alleged offender. The board of  
37 governors may approve civil injunctive proceedings, referral to the  
38 appropriate state attorney for indirect criminal contempt  
39 prosecution, or such other action as may be appropriate.

40 ~~(d)~~ (e) All appointments to the standing committee shall be  
41 for a term of three (3) years. No member shall be appointed to more  
42 than two (2) consecutive full terms. The members of the standing  
43 committee shall not be subject to removal by the Court during their  
44 terms of office, except for cause. Cause shall include unexcused  
45 failures to attend scheduled meetings, the number of which shall be  
46 set forth by the standing committee in an attendance policy.

47 10-2 Circuit committees.

48 10-2.1 Generally.

49 (a) Each circuit committee shall be appointed by the Court  
50 on advice of the board of governors and shall consist of not fewer

51 than three (3) members, at least one of whom shall be a nonlawyer.  
52 A majority of a circuit committee shall constitute a quorum. The  
53 terms of the members of circuit committees shall begin on the first  
54 day of July and shall end on the next succeeding thirtieth day of  
55 June or at such time as their successors are appointed and  
56 qualified. The expiration of the term of any member shall not  
57 disqualify such member from concluding any investigations pending  
58 before him or her. Any member of a circuit committee may be removed  
59 from office by the board of governors.

60 (b) For each circuit committee there shall be a chairman  
61 designated by the board of governors and a vice-chairman and  
62 secretary designated by the chairman of each circuit committee. The  
63 chairman shall be a member of The Florida Bar.

64 (c) It shall be the duty of each circuit committee to  
65 investigate, with dispatch, all reports of unlicensed practice of  
66 law and to make prompt written report of its investigation and  
67 findings to the standing committee.

68 10-3 Standing committee.

69 10-3.1 Generally. The board of governors is delegated the authority  
70 to appoint a chairman and vice-chairman of the standing committee,  
71 both of whom shall be members of The Florida Bar. A majority of the  
72 members of the standing committee shall constitute a quorum.

73 The duties of the standing committee shall include, but not  
74 be limited to, the following:

75 (a) The consideration and investigation of activities which  
76 may, or do, constitute the unlicensed practice of law;

77 (b) The supervision of the several circuit committees, which  
78 shall include, but not be limited to:

79 (1) Prescribing rules of procedure for circuit  
80 committees;

81 (2) Assigning reports of unlicensed practice of law for  
82 investigation;

83 (3) Reassigning or withdrawing matters previously  
84 assigned and exercising final authority to close cases not deemed by  
85 the standing committee to then warrant litigation for unlicensed  
86 practice of law and to close cases proposed to be resolved by cease  
87 and desist affidavit;

88 (4) Joining with a circuit committee in a particular  
89 investigation;

90 (5) Assigning staff investigators, staff counsel and  
91 voluntary bar counsel to conduct investigations on behalf of or in  
92 concert with the circuit committees; and

93 (6) Suspending circuit committee members and chairmen  
94 for cause and appointing a temporary circuit committee chairman  
95 where there has been a suspension, resignation or removal, pending  
96 the appointment of a permanent chairman by the board of governors.

97 (c) The reporting of recommendations to the board of  
98 governors that litigation should be instituted in order to prevent  
99 the unlicensed practice of law;

100 (d) The initiation and supervision of litigation authorized  
101 by the board of governors including the delegation of responsibility  
102 to staff counsel, assistant staff counsel or bar counsel to  
103 prosecute such litigation;

104 (e) The giving of advice regarding the unlicensed practice  
105 of law policy to the officers, board of governors, staff, sections,  
106 or committees of The Florida Bar as requested; and

107 (f) Furnishing any and all information, confidential records  
108 and files regarding pending or closed investigations of unlicensed  
109 practice of law to any state or federal law enforcement agency, the  
110 Florida Board of Bar Examiners, and Florida Bar grievance committees  
111 where there is or may be a violation of state or federal law or the  
112 Rules of Professional Conduct of The Florida Bar.

113 10-4 Investigations.

114 10-4.1 Powers, duties.

115 (a) Upon receiving a written application of the chairman of  
116 the standing committee or of a circuit committee alleging facts  
117 indicating that a person or entity is or may be practicing law  
118 without a license and that the issuance of a subpoena is necessary  
119 for the investigation of such unlicensed practice, the clerk of the  
120 circuit court in which the committee is located or the clerk of the  
121 Supreme Court of Florida shall issue subpoenas in the name,  
122 respectively, of the chief judge of the circuit or the chief justice  
123 for the attendance of any person and production of books and records  
124 before designated counsel or the investigating circuit committee or  
125 any member thereof designated in such application at the time and  
126 place within its circuit designated by the investigating circuit  
127 committee. Such subpoenas shall be returnable to the circuit court  
128 of the residence or place of business of the person subpoenaed. A

129 like subpoena shall issue upon application by any person or entity  
130 under investigation.

131 (b) Failure to comply with any subpoena shall constitute a  
132 contempt of court and may be punished by the Supreme Court of  
133 Florida or by the circuit court or the circuit to which the subpoena  
134 is returnable or where the contemnor may be found. The circuit  
135 court to which the subpoena is returnable shall have power to enter  
136 such orders as may be necessary for the enforcement of the subpoena.

137 (c) Each circuit committee and member thereof conducting  
138 investigations is empowered to take and have transcribed the  
139 testimony and evidence of witnesses who may be sworn by any person  
140 authorized by law to administer oaths.

141 (d) The board of governors shall employ one or more  
142 assistant staff counsel and other necessary employees including  
143 investigators to assist the standing committee to carry out its  
144 responsibilities as prescribed herein.

145 10-5 Civil injunctions.

146 10-5.1 Proceedings generally.

147 (a) Complaints shall be by petition filed in the Supreme  
148 Court of Florida by The Florida Bar in its name.

149 (b) Each such petition shall be processed in the Supreme  
150 Court of Florida in accordance with the following procedure:

151 (1) The petition shall not be framed in technical  
152 language, but shall with reasonable clarity set forth the facts  
153 constituting the unlicensed practice of law. A prayer for relief  
154 may be included in the petition, but shall not be required.

155           (2) The Court, upon consideration of any petition so  
156 filed, may issue its order to show cause directed to the respondent  
157 commanding said respondent to show cause, if there be any, why the  
158 respondent should not be enjoined from the unlicensed practice of  
159 law alleged, and further requiring the respondent to file with the  
160 Court within twenty (20) days after service on him of the petition  
161 and order to show cause a written answer admitting or denying each  
162 of the matters set forth in the petition. The legal sufficiency or  
163 the petition may, at the option of the respondent be raised by  
164 motion to dismiss filed prior to or at the time of the filing of the  
165 answer. The filing of a motion to dismiss prior to the filing of an  
166 answer shall postpone the time for the filing of an answer until ten  
167 (10) days after disposition of said motion. The order and petition  
168 shall be served upon the respondent in the manner provided for  
169 service of process by rule 1.070(b), Florida Rules of Civil  
170 Procedure. Service of all other pleadings shall be governed by the  
171 provisions of rule 1.080, Florida Rules of Civil Procedure.

172           (3) Any party may request oral argument upon any  
173 question of law raised by the initial pleadings. The Court may, in  
174 its discretion, set the matter for oral argument upon the next  
175 convenient motion day or at such time as it deems appropriate.

176           (4) If no response or defense is filed within the time  
177 permitted, the allegations of the petition shall be taken as true  
178 for purposes of that action. The Court will then, upon its motion  
179 or upon motion of any party, decide the case upon its merits,  
180 granting such relief and issuing such order as might be appropriate;  
181 or it may refer the petition for further proceedings according to  
182 rule 10-5.1(b)(6).

183 (5) If a response or defense filed by a respondent  
184 raises no issue of material fact, any party, upon motion, may  
185 request summary judgment and the Court may rule thereon as a matter  
186 of law.

187 (6) The Court may, upon its motion or upon motion of  
188 any party, enter a judgment on the pleadings or refer questions of  
189 fact to a referee for determination. The referee shall be a circuit  
190 judge of the State of Florida.

191 (c) Proceedings before the referee shall be in accordance  
192 with the following:

193 (1) The proceedings shall be held in the county where  
194 the respondent resides or where the alleged offense was committed,  
195 whichever shall be designated by the Court.

196 (2) Upon assignment of a cause for trial, the board of  
197 governors shall appoint bar counsel to prosecute the cause before  
198 the referee.

199 (3) Witness subpoenas shall run in the name of the  
200 Court and shall be issued by the referee upon request of a party.  
201 Failure or refusal to comply with any subpoena shall be contempt of  
202 Court and may be punished by the Court or by any circuit court where  
203 the action is pending or where the contemnor may be found, as if  
204 said refusal were a contempt of that court.

205 (4) The Florida Rules of Civil Procedure, including  
206 those provisions pertaining to discovery, not inconsistent with  
207 these rules, shall apply in injunctive proceedings before the  
208 referee. The powers and jurisdiction generally reposed in the court  
209 under those rules may in this action be exercised by the referee.  
210 The Florida Bar may in every case amend its petition one time as of

211 right, within sixty (60) days after the filing of the order of  
212 reference to a referee.

213 (5) Review of interlocutory rulings of the referee may  
214 be had by petition to the Court filed within thirty (30) days after  
215 entry of the ruling complained of. A supporting brief and a  
216 transcript containing conformed copies of pertinent portions of the  
217 record in the form of an appendix shall be filed with the Court by a  
218 party seeking such review. Any opposing party may file his  
219 responsive brief and appendix containing any additional portions of  
220 the record deemed pertinent to the issues raised within ten (10)  
221 days thereafter. The petitioner may file a reply brief within five  
222 (5) days of the date of service of the opposing party's responsive  
223 brief. Any party may request oral argument at the time his brief is  
224 filed or due. Interlocutory review hereunder shall not stay the  
225 cause before the referee unless the referee or the Court on its  
226 motion or upon motion of any party shall so order.

227 (6) At the conclusion of the hearing, the referee shall  
228 file a written report with the Court stating findings of fact,  
229 conclusions of law and recommendation for final disposition of the  
230 cause. The original record shall be filed with the report. Copies  
231 of the referee's report shall be served upon all parties by the  
232 referee at the time it is filed with the Court.

233 (d) Review by the Supreme Court of Florida.

234 (1) Objections to the report of the referee shall be  
235 filed with the Court by any party aggrieved, within thirty (30) days  
236 after the filing of said report. If the objector desires, a brief  
237 in support of the objections may be filed at the time the objections  
238 are filed. Any other party may file a responsive brief within



239 twenty (20) days of service of objector's brief. The objector may  
240 file a reply brief within ten (10) days of service of the opposing  
241 party's responsive brief. Oral argument will be allowed at the  
242 Court's discretion and will be governed by the provisions of the  
243 Florida Rules of Appellate Procedure.

244 (2) Upon the expiration of the time to file objections  
245 to the referee's report, the Court shall review the report of the  
246 referee, together with any briefs or objections filed in support of  
247 or opposition to such report. After review, the Court shall  
248 determine as a matter of law whether the respondent has engaged in  
249 the unlicensed practice of law and whether his activities should be  
250 enjoined by appropriate order and whether further relief shall be  
251 granted.

252 (e) Nothing set forth in this rule shall be construed to  
253 limit the authority of the Court, upon proper application, to issue  
254 a preliminary or temporary injunction, or at any stage of the  
255 proceedings to enter any such order as to the Court may seem proper  
256 when public harm or the possibility thereof is made apparent to the  
257 Court, in order that such harm may be summarily prevented or  
258 speedily enjoined.

259 10-6 Confidentiality.

260 10-6.1 File confidentiality access. All unlicensed practice of law  
261 investigation matters including files, correspondence, preliminary  
262 investigation reports, interoffice memoranda, and records of  
263 investigations are confidential unless otherwise provided herein or  
264 ordered by the Court.

265 10-7 Advisory opinions.

266 10-7.1 Procedures for issuance of advisory opinions on the  
267 unlicensed practice of law.

268 (a) Definitions.

269 (1) Committee. The standing committee on the  
270 unlicensed practice of law, as constituted according to the  
271 directives contained in these rules.

272 (2) Petitioner. An individual or organization seeking  
273 guidance as to the applicability, in a hypothetical situation, of  
274 the state's prohibitions against the unlicensed practice of law.

275 (3) Public notice. Publication in a newspaper of  
276 general circulation in Leon County, Florida, and in The Florida Bar  
277 News.

278 (4) Court. The Supreme Court of Florida (or such other  
279 court in the State of Florida the Supreme Court may designate).

280 ~~(5) UPL. The unlicensed practice of law, as prohibited~~  
281 ~~by statute, court rule, and case law of the State of Florida.~~

282 (b) Requests for advisory opinions. The committee shall  
283 respond to written requests from all persons and entities seeking  
284 advisory opinions concerning activities which may constitute the  
285 unlicensed practice of law. Such requests shall be in writing  
286 addressed to The Florida Bar, Tallahassee, Florida 32301. The  
287 request for an advisory opinion shall state in detail all operative  
288 facts upon which the request for opinion is based and contain the  
289 name and address of petitioner.

290 (c) Limitations on opinions. No opinion shall be rendered  
291 with respect to any case or controversy pending in any court in this  
292 jurisdiction and no informal opinion shall be issued.

293 (d) Services of voluntary counsel. The committee shall be  
294 empowered to request and accept the voluntary services of a person  
295 licensed to practice in this state when the committee deems it  
296 advisable to receive written or oral advice regarding the question  
297 presented by the petitioner.

298 (e) Conflict of interest. Committee members shall not  
299 participate in any matter in which they have either a material  
300 pecuniary interest that would be affected by a proposed advisory  
301 opinion or committee recommendation or any other conflict of  
302 interest that should prevent them from participating. However, no  
303 action of the committee will be invalid where full disclosure has  
304 been made and the committee has not decided that the member's  
305 participation was improper.

306 (f) Notice, appearance and service.

307 (1) At least thirty (30) days in advance of the  
308 committee meeting at which initial action is to be taken with  
309 respect to a potential advisory opinion, the committee shall give  
310 public notice of the date, time, and place of the meeting, state the  
311 question presented and invite written comments on the question. On  
312 the announced date the committee shall hold a public hearing at  
313 which any person affected shall be entitled to present oral  
314 testimony and be represented by counsel. Oral testimony by other  
315 persons may be allowed by the committee at its discretion. At the  
316 time of or prior to the hearing any other person shall be entitled  
317 to file written testimony on the issue before the committee.

318 Additional procedures not inconsistent with this rule may be adopted  
319 by the committee.

320 (2) The committee shall issue either a written proposed  
321 advisory opinion or a letter which declines to issue an opinion. No  
322 other form of communication shall be deemed to be an advisory  
323 opinion.

324 (3) A proposed advisory opinion shall be in writing and  
325 shall bear a date of issuance. The proposed opinion shall  
326 prominently bear a title indicating that it is a proposed advisory  
327 opinion and a disclaimer stating that it is only an interpretation  
328 of the law and does not constitute final court action. The  
329 committee shall arrange for the publication of the proposed advisory  
330 opinion within a reasonable time.

331 (g) Service and judicial review of proposed formal  
332 advisory opinion.

333 (1) The committee shall file a copy of the opinion and  
334 all materials considered by the committee in adopting the opinion  
335 with the clerk of the Court. The proposed advisory opinion,  
336 together with notice of the filing thereof, shall be furnished by  
337 certified mail to the petitioner.

338 (2) Within thirty (30) days of the filing of the  
339 opinion the petitioner may file objections and a brief or memorandum  
340 in support thereof, copies of which shall be served on the  
341 committee. Any other interested person may seek leave of the Court  
342 to file and serve a brief in accordance with this same procedure.  
343 The committee may file a responsive brief within twenty (20) days of  
344 service of the initial brief. The petitioner, as well as other  
345 interested persons with leave of Court, may file a reply brief

346 within ten (10) days of service of the responsive brief. At its  
347 discretion, the Court shall permit reasonable extension of these  
348 time periods. Oral argument will be allowed at the Court's  
349 discretion. The Florida Rules of Appellate Procedure shall  
350 otherwise govern the above methods of filing, service, and argument.

351 (3) Upon the expiration of the time to file objections,  
352 briefs, and replies thereto, the Court shall review the advisory  
353 opinion, regardless of whether any such objections are in fact made,  
354 together with any briefs or objections filed in support of or in  
355 opposition to such opinion. Upon review, it shall approve, modify,  
356 or disapprove the advisory opinion, and the ensuing opinion shall  
357 have the force and effect of an order of this Court and be published  
358 accordingly. There shall be no further review of the opinion except  
359 as granted by this Court in its discretion, upon petition to this  
360 Court.

361 10-8 Immunity.

362 10-8.1 Generally. The members of the committee and circuit  
363 committees, as well as staff persons and appointed voluntary counsel  
364 assisting those members, shall have absolute immunity from civil  
365 liability for all acts in the course of their official duties.

366 10-9 Amendments.

367 10-9.1 Generally. Rules governing the investigation and prosecution  
368 of the unlicensed practice of law may be amended in accordance with  
369 the procedures for amending the Rules Regulating The Florida Bar.