

Supreme Court of Florida

ORIGINAL

No. 79,288

THE FLORIDA BAR

RE: AMENDMENT TO RULES
REGULATING THE FLORIDA BAR

[July 23, 1992]

PER CURIAM.

The Florida Bar petitions this Court to amend the Rules Regulating The Florida Bar and to change the format of those rules generally to comply with style and gender requirements as mandated by this Court and in response to the Report of The Florida Supreme Court Gender Bias Study Commission, 42 Fla. L. Rev. 803 (1990). We have jurisdiction. Art. V, §§ 2(a) and 15, Fla. Const.

The specific rules before us to be created or amended are listed below. Those rules requiring only style and format changes are not listed.

Rule 1-7.3(a)	Dues Requirement
Rule 1-7.3(c)	Election of Inactive Membership
Rule 2-3.2(d)	Powers (previously rule 2-3.2(c))
Rule 3-5.1(i)	Restitution (new)
Rule 3-7.4(l)	Letter Reports of No Probable Cause Cases (previously rule 3-7.4(k))
Rule 3-7.6(n)	Cost of Review or Reproduction
Rule 3-7.10(e)	Reference of Petition for Hearing
Rule 4-1.17	Sale of Law Practice (new)
Rule 4-5.4(a)	Professional Independence of a Lawyer
Rule 4-5.6	Restrictions on Right to Practice
Rule 4-7.2(n)	Advertising
Rule 4-7.5	Evaluation of Advertisements
Rule 4-7.8	Lawyer Referral Services
Rule 6-4.4	Recertification (board certified civil trial lawyer)
Rule 6-5.4(b)	Recertification (board certified tax lawyer)
Rule 6-6.5(c)	Recertification (board certified marital and family lawyer)
Rule 6-8.4(c)	Recertification (board certified criminal trial lawyer)
Rule 6-8.6(c)	Recertification (board certified criminal appellate lawyer)
Rule 6-9.4(b)	Recertification (board certified real estate lawyer)
Rule 6-11.5(d)	Recertification (board certified workers' compensation lawyer)
Chapter 6-12	Basic Skills Course Requirement
Chapter 10	Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law
Chapter 16	Foreign Legal Consultancy Rule (new)

With minor modifications as set forth herein, we approve the bar's proposals. We also consider, on our own motion, amendments to the following rules:

Rule 4-1.5(f) Fees for Legal Services
Rule 11-1.8 Continuation of Practice Program
after Completion of Law
School Program or Graduation

We find the following rules deserve discussion.

Rule 4-1.17 - Sale of Law Practice

Rule 4-1.17 is a proposed new rule concerning the sale of a law practice. We approve the rule as proposed. Nevertheless, because of comments we received and because of the need to protect the rights of clients, we request the bar to consider possible future modification of the rule to allow for the sale of a law practice to more than one entity.

Rule 4-7.2(n) - Advertising

The proposed amendment to rule 4-7.2(n) (Advertising) allows lawyers to provide information about an area in which they practice, even though it may not be an area subject to certification. One comment submitted to this Court suggested that language should be added to include information regarding the lawyer's educational background. The Florida Bar's Standing Committee on Advertising has agreed to language that would modify the proposed rule as follows:

(3) Technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions.

We find that the additional language should be included in the new rule.

Rule 4-7.5 - Evaluation of Advertisements

The proposed amendment to rule 4-7.5 (Evaluation of Advertisements) removes the specific fees set forth in subdivision (d)(4) for evaluation and review of advertisements and in subdivision (i) for modification of advertisements. In lieu thereof, the proposed amendment provides that the fees are to be set by the board of governors in an amount that approximates the cost of the advertising program. Implementing this change would allow the board of governors to increase the fee without amending this rule. While we agree some flexibility should be incorporated into the rule, we find that the fee should, in no event, exceed \$50 and any fee above that amount should first be approved by this Court. In accordance with this conclusion, rule 4-7.5 is modified to read as follows:

(d)(4) Aa fee of ~~twenty five dollars~~ to be set by the board of governors but not exceeding \$50, ~~made payable to The Florida Bar.~~ This fee shall be used ~~only for the purpose~~ to offset the cost of evaluation and review of advertisements submitted under these rules and ~~for the related purpose~~ cost of enforcing these rules.

(i) Change of Circumstances; Refiling Requirement. If a change of circumstances occurring subsequent to the committee's evaluation of an advertisement or written communication raises a substantial possibility that the advertisement or communication has become false or misleading as a result of the change in circumstances, the lawyer shall promptly refile the advertisement or a modified advertisement with the committee along with an explanation of the change in circumstances and an additional fee of ~~twenty dollar~~ to be set by the board of governors but not exceeding \$50.

Rule 4-7.8 - Lawyer Referral Services

The proposed change to rule 4-7.8(b) (Lawyer Referral Services) expands the definition of a referral service to include group or pooled advertising schemes between lawyers in different firms. The Lawyers Referral Service Committee of The Florida Bar suggests that the following clarification sentence also be added to the proposed rule:

A pro bono referral program, in which the participating attorneys do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration, is not a lawyer referral service within the definition of this rule.

As noted by the committee, the distinction is important because most pro bono referral services are bar-sponsored and funded by the local bar association. The Florida Bar has no objection to the inclusion of this additional language, and we find that this sentence should be added to the proposed rule.

Rule 10-7.1 - Procedures for Issuance of Advisory Opinions on the Unlicensed Practice of Law

Rule 10-7.1(f)(3), renumbered 10-9.1(f)(3) (Procedures for Issuance of Advisory Opinions on the Unlicensed Practice of Law), contains a provision that eliminates the need to publish in full a proposed advisory opinion. Instead, the proposed rule requires publication of a notice two weeks before the filing of an opinion and allows interested parties to obtain a copy of the full opinion and file a response. This proposed change places the burden on an interested party to request a copy of the full opinion. Under the existing rule, the burden is on the

interested party to simply read the opinion as it appears in the The Florida Bar News. However, as noted by the bar, because the current rule only provides for publication within a "reasonable time," the proposed two week notice requirement will actually provide interested parties with more time to review and analyze the opinion. Thus, we find that the proposed change does not violate due process, and we reject the suggestion that the present provision should be retained.

New Chapter 16 - Foreign Legal Consultancy Rule

The final proposal of the bar warranting discussion concerns a proposed new chapter 16 entitled "Foreign Legal Consultancy Rule." This new chapter is designed to allow attorneys admitted to the practice of law in a foreign country to open offices in Florida and to advise persons as to the law of their foreign jurisdiction. A registration and regulatory scheme would be provided, as well as a reciprocity requirement for Florida attorneys in such foreign jurisdictions. This rule is proposed by the International Law Section of the Florida Bar.

The International Law Section believes the new chapter would resolve uncertainty in this unregulated and unsettled area of the law by regulating this type of practice and by making foreign legal consultants accountable in Florida. Additionally, by aiding the delivery of legal services regarding foreign law that are necessary to international trade and investment, the International Law Section believes the proposed chapter would promote Florida's goal of attracting more foreign investment and business.

The Florida Board of Bar Examiners objects to the proposal, believing that the chapter does not sufficiently protect the public. We disagree. The proposed chapter provides a means of control and protection for the public that does not now exist and, consequently, we find that it is an adequate beginning for regulation of this type of legal activity.

We decline, however, to adopt the proposed provision requiring foreign legal consultants to be admitted to practice in a foreign country that recognizes a reciprocal right of Florida attorneys to practice in that country. As indicated by the United States Trade Representative, the United States Government is currently engaged in negotiations with foreign countries to provide for open markets through mutual agreement that, as a general rule, requires countries to refrain from using reciprocity requirements. The United States Trade Representative has requested we eliminate the reciprocity provision because it would interfere with those trade negotiations. We accede to this request and find it inappropriate to include the reciprocity requirement in the new chapter.

In addition to the bar's proposals, this Court, on its own motion, makes the following rule changes:

Rule 4-1.5(f) - Fees for Legal Services

Rule 4-1.5(f)(4)(B)(i) establishes guidelines for contingent fees and states that contingent fees over the amounts set forth in the rule are presumed to be clearly excessive. As the rule currently reads, the formula for contingency fees is

somewhat ambiguous. To eliminate the ambiguity, we have amended the rule as set forth in the appendix to this opinion.

Rule 11-1.8 - Continuation of Practice Program
after Completion of Law School Program or Graduation

We have included a new paragraph in rule 11-1.8 to establish the definition of an equivalent law school practice program for students from non-Florida law schools.

Accordingly, we approve amendments to the Rules Regulating The Florida Bar as set forth in the appendix to this opinion. These amendments shall be effective at 12:01 a.m. on January 1, 1993.

It is so ordered.

BARKETT, C.J. and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.