

Supreme Court of Florida

No. 85,896

AMENDMENT TO RULES REGULATING THE FLORIDA BAR--RULE 4-1.18,
CLIENT-LAWYER RELATIONSHIPS IN FAMILY LAW MATTERS.

[November 16, 1995]

PER CURIAM.

Over fifty members of The Florida Bar, who are also members of the Florida Chapter of the American Academy of Matrimonial Attorneys, petition this Court to adopt a proposed rule of professional conduct. We have jurisdiction. Art. V, § 15, Fla. Const; R. Reg. Fla. Bar. 1-12.1(f).

Proposed rule 4-1.18 would govern the conduct of attorneys in "family law matters."¹ According to the petitioners, the

¹ The term "family law matters" as used in the proposed rule includes negotiations and litigation involving dissolution of marriage, separation, annulment, custody, visitation, maintenance, alimony and other support related to dissolution, child support, adoptions, paternity, premarital agreements, marital agreements, marital property issues, initial actions and modification proceedings, actions to enforce the judgment or

proposed rule is designed to inform family law clients and lawyers of their respective rights and responsibilities and to set standards of conduct for attorneys to prevent potential abuses of the lawyer-client relationship. To this end, the proposed rule requires that a written retainer agreement be executed and that a statement of client's rights and responsibilities be given the client prior to the execution of the agreement. It also addresses such matters as non-refundable retainers, security interests, and retaining and charging liens, and contains a prohibition on sexual relationships between family law lawyers and their clients.

After thoroughly considering the petition, along with the response of The Florida Bar, comments of interested attorneys and members of the public, we decline to adopt the proposed rule. We recognize that the petition is a sincere attempt to improve attorney-client relations and curtail potential abuses in this sensitive area of practice. However, as pointed out by the Bar and a number of those who filed comments, the petitioners have not demonstrated that there is a need to treat those members of the Bar who practice family law differently than other members of the Bar. Moreover, we recently addressed a major concern raised in the petition.

After extensive study of attorney-client sexual relations,

obtain an order in connection with any such claims or actions.

the Bar proposed an amendment to rule 4-8.4 designed to protect clients from sexual exploitation that was adopted by this Court. New rule 4-8.4(i) prohibits a lawyer from engaging "in sexual conduct with a client that exploits the lawyer-client relationship." Florida Bar re Amendments to Rules Regulating Fla. Bar, 658 So. 2d 930 (Fla. 1995). We believe this prohibition adequately protects all clients from sexual exploitation, including those who seek legal assistance in family law matters.

Accordingly, the petition to adopt proposed rule 4-1.18 is denied. However, should a need to amend the Rules Regulating The Florida Bar to specifically address the professional conduct of family law lawyers be demonstrated in the future, the Court will entertain proposed amendments on the subject at that time.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Original Proceeding - Rules Regulating The Florida Bar

Raymond Ehrlich and Scott D. Makar of Holland & Knight, Jacksonville, Florida, on behalf of the following active members of The Florida Bar and the American Academy of Matrimonial Attorneys, Florida Chapter,

Brenda Abrams, Ira Abrams, Durand Adams, Raymond Alley, Jr., John Asbell, Harold P. Barkas, Jason M. Berkman, Marc H. Brawer, Gordon C. Brydger, Victoria Santoro Calebrese, Robert Chambers, Neil Chonin, Bruce A. Christensen, Stanton L. Cobb, Larry K. Coleman, Donald G. Criscuolo, Stephen Cypen, Albert J. Datz, Angelo Demos, A. Norman Drucker, Edna Y. Elliott, Robert Ervin, K. Dian Fedak, Russell Ferraro, Lyman T. Fletcher, Robert Floyd, Gill Freeman, Thomas Gary, Arthur Ginsburg, Alan Gold, Joel L. Goldman, Cynthia L. Greene, Martin L. Haines III, Michael L. Hastings, Frasier Himes, Victoria M. Ho, Mark Hulsey, Sandy Karlan, Ann L. Kerr, Gerald I. Kornreich, Judith Kreeger, Maurice Jay Kutner, Andrew M. Leinoff, David H. Levin, Neil P. Linden, John E. Long, Hugh T. Maloney, Stuart Manoff, Miriam E. Mason, A. Matthew Miller, James Fox Miller, Carmen Morales, Arnold Nevins, Jerome Novey, Luis Padron, Ray H. Pearson, William L. Penrose, Juan Ramirez, Jr., Gerald Richman, James Rinnaman, Jr., Peggy Rowe-Linn, Alan J. Rubenstein, Melvin Rubin, Fletcher Rush, Donald J. Sasser, G. Robert Schultz, Stephen W. Sessums, Robert Shalhaob, Honorable Winifred J. Sharp, L. David Shear, Chesterfield Smith, Maria Soto, John M. Strickland, Arthur Taylor, Richard Tjera, Richard D. West, Joel Weissman, Burton Young, and Elliott Zisser,

Petitioners

K. Timothy Kemper, Miami, Florida; Gary W. Lyons of McFarland, Gould, Lyons & Sullivan, P.A., Clearwater, Florida; Joel M. Cohen, Pensacola, Florida; Nord L. Johnson of Nord L. Johnson, P.A., DeLand, Florida; Antonio Capestany, North Miami Beach, Florida; Charles L. Brown, Executive Director of Polk County

Legal Aid Society, Inc., Lakeland, Florida; Robert Bertrand, Miami Lakes, Florida; Paul Martz, St. Augustine, Florida; John A. DeVault III, President, John W. Frost II, President-elect, Miles A. McGrane, Chair, Disciplinary Procedure Committee, John F. Harkness, Jr., Executive Director and John Anthony Boggs, Director of Lawyer Regulation, Tallahassee, Florida, on behalf of The Florida Bar; Ron Eubanks d/b/a Lawyer Complaint Service, Fort Walton Beach, Florida; Jimmy Hatcher, pro se, Bristol, Florida; Dalwin Albert, Bradenton, Florida; Robert A. Zeller, pro se, Redington Shores, Florida; Ms. Budagail S. Kirchman, Titusville, Florida; Ann M. Cole of Judicial Reform Committee, Orlando, Florida; Peter A. Rubelman, North Miami Beach, Florida; Elaine M. College, Vice President Entertainment Busch Gardens Tampa Bay, Tampa, Florida; and Ike Anderson, Monticello, Florida,

Interested Parties Responding