

FILED

SID J. WHITE

JAN 2 1996

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. _____

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. This petition and the motion filed herewith are filed at the direction of the board of governors of The Florida Bar.

2. Filed with this petition is a motion for waiver of the prior publication rule and a motion for leave to file the petition to amend.

3. Notice of the filing of this petition and the full text of the amendments included herein were published in the January 1, 1996 issue of The Florida Bar News, a copy of which is attached hereto as Exhibit 1.

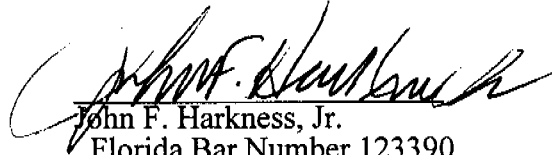
4. The proposed amendments to Chapter 10, Rules Governing The Investigation And Prosecution Of The Unlicensed Practice Of Law, relate to the Rule 10-7 and allow the granting of restitution in unlicensed practice of law prosecutions and sets forth the costs which may be awarded. Existing Rule 10-7 is silent on this issue. Restitution is allowed in grievance matters against attorneys. Rule 3-5.1(i), R. Reg. Fla. Bar. Restitution is being requested in unlicensed practice of law prosecutions in an effort to protect the public and make victims of unlicensed practitioners whole. The costs which may be awarded in grievance matters are set forth in Rule 3-7.6(o), R. Reg. Fla. Bar. The amendment to Chapter 10 regarding costs will specifically set forth what may be awarded.

A copy of Rule 10-7, Rules Governing The Investigation And Prosecution Of Unlicensed Practice Of Law, containing the proposed deletion, amendment and addition, is attached hereto as

Exhibit 2.

WHEREFORE, The Florida Bar respectfully requests that the court will amend the Rules Regulating The Florida Bar as requested herein.

Respectfully submitted,



John F. Harkness, Jr.
Florida Bar Number 123390
Executive Director
John A. DeVault, III
Florida Bar Number 103979
President
Mary Ellen Bateman
Florida Bar Number 324698
Unlicensed Practice of Law Counsel
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Official Notice

The Florida Bar News/January 1, 1996-3

Proposed amendments to unlicensed practice of law rules

The Board of Governors of The Florida Bar hereby gives notice of filing with the Supreme Court of Florida on or about January 2, 1996, a petition to amend the Rules Regulating The Florida Bar and seek amendment to Rule 10-7. Together with the petition, the Bar will file a motion for waiver of the prior publication requirement.

The amendment would allow the referee and the Supreme Court of Florida to grant restitution to victims in an unlicensed practice of law prosecution. The amendment also sets forth the costs which may be awarded. The full text of the proposed amendment is printed below.

A copy of the motion and petition may be requested by writing to the Unlicensed Practice of Law Department, The Florida Bar, 650 Apalachee Parkway, Tallahassee 32399-2300.

Members who desire to comment on the proposed amendment may do so after filing of the petition, but no later than February 1. Comments should be filed directly with the clerk of the Supreme Court of Florida, and a copy must be served on the executive director of The Florida Bar.

Rule 1-12.1, Rules Regulating The Florida Bar, governs these proceedings.

10-7. PROCEEDINGS BEFORE A REFEREE RULE 10-7.1 PROCEEDINGS GENERALLY

(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) **Petition 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) 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.

EXHIBIT 1

(3) 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.

(4) 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 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 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 within 5 days of the date of service of the opposing party's responsive brief. Any party may request oral argument at the time that party's brief 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.

(5)(d) Referee's Report.

(1) At the conclusion of the hearing, the referee shall file a written report with the court stating findings of fact, conclusions of law, a recommendation for restitution as provided in rule 10-7.1(d)(2), a statement of costs incurred and recommendations as to the manner in which costs should be taxed as provided in rule 10-7.1(d)(3), and a recommendation for final disposition of the cause. 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) A respondent may be ordered or agree to pay restitution to a complainant or other person. In such instances the amount of restitution shall be specifically set forth in the referee's report or stipulation. The referee's report or stipulation shall also state to whom restitution shall be made and the date by which it shall be completed.

(3) The referee shall have discretion to award costs and absent an abuse of discretion the referee's award shall not be reversed. Taxable costs of the proceeding shall include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(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 of the respondent if acting as counsel.

(4) 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(e)(5)~~ 10-7.1(d) 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 and the date by which it shall be completed shall be specifically set forth in the stipulation.

(e) 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. If the objector desires, a brief in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief within 20 days of service of the objector's brief. The objector may file a reply brief within 10 days of service of the opposing party's responsive brief. 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 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 restitution should be ordered, whether costs should be awarded, and whether further relief shall be granted.

(f) 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.

00001 10-7. PROCEEDINGS BEFORE A REFEREE

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RULE 10-7.1 PROCEEDINGS GENERALLY

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00019 (2) The court, upon consideration of any petition so
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00021 respondent commanding the respondent to show cause, if there be
00022 any, why the respondent should not be enjoined from the
00023 unlicensed practice of law alleged, and further requiring the
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00025 counsel within 20 days after service on the respondent of the
00026 petition and order to show cause a written answer admitting or
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00042 convenient motion day or at such time as it deems appropriate.

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00045 permitted, the allegations of the petition shall be taken as
00046 true for purposes of that action. The court will then, upon its
00047 motion or upon motion of any party, decide the case upon its
00048 merits, granting such relief and issuing such order as might be
00049 appropriate; or it may refer the petition for further
00050 proceedings according to rule 10-7.1(b)(6).

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00053 no issue of material fact, any party, upon motion, may request
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00086 had by petition to the court filed within 30 days after entry of
00087 the ruling complained of. A supporting brief and a transcript
00088 containing conformed copies of pertinent portions of the record
00089 in the form of an appendix shall be filed with the court by a
00090 party seeking such review. Any opposing party may file a
00091 responsive brief and appendix containing any additional portions
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