

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

THE FLORIDA BAR, pursuant to R. Regulating Fla. Bar 1-12.1, hereby petitions this court for an order amending the Rules Regulating The Florida Bar and states:

I

1. This petition has been authorized by the Board of Governors of The Florida Bar.

2. This submission includes all proposed new rules or amendments to existing rules that were favorably recommended by the Board of Governors or Executive Committee of The Florida Bar between March 2006 and July 2008 with the exception of: three purely editorial adjustments noted in section V, *infra*; and, as more fully discussed in section VI, *infra*, two other rules filings already tendered to this court and a separate presentation of new legal certification programs which the bar intends to file subsequent to this petition.

II

3. The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. Consistent with this court's administrative order No. AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*, each such entry

additionally reflects other information regarding the development of these proposals as further specified in Part III of the court's guidelines regarding petitions to amend the Rules Regulating The Florida Bar: *i.e.*, an explanation of each amendment; the reasons for each recommended change; the sources of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the bar's governing board; and, dissenting views within the board, if any, regarding each submission.

III

4. As the following list reflects, some rules herein were the object of several proposed revisions that were considered at different times or as individual action items by the board of governors. When that occurred, those various amendments are reported as separate items to better reflect the distinctive aspects of their development.

Chapter 1 General

Subchapter 1-3. Membership

Rule 1-3.6 Delinquent Members

Explanation: Within subdivisions (e) and (f), changes the period of time for the effective date of delinquencies, from 90 days to 30 days.

Reasons: Revised to provide a uniform 30-day time frame for the start date of delinquencies based on failure to pay fees or other amounts due the bar or others, for easier understanding and administration – the current rule provides two different time periods in various matters involving a member's failure to honor such obligations.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed on March 15, 2006, April 6, and May 5, 2006; Disciplinary Procedure Committee favorably reported substantive review by vote of 10-0 on May 5, 2006.

- Board of Governors conceptually approved on June 2, 2006.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Rule 1-3.7 Reinstatement to Membership

Explanation: Within subdivision (a), revises verbiage so that the provision effectively relates to all types of membership delinquencies.

Reasons: Editorial amendment, to revise language so that rule addresses all types of membership delinquencies rather than the limited instances referenced in current rule. *See* extract of materials from June 1, 2006 meeting of the Program Evaluation Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 2-4.

Source: Bar Staff.

Background Information – Member Commentary / Committee Action:

- Proposed by staff and referred to Program Evaluation Committee for substantive review.
- On April 7, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/email vote of 7-0 on May 12, 2006.
- Program Evaluation Committee favorably reported substantive review by vote of 8-0 on June 1, 2006.

Board Action: Board of Governors approved on June 2, 2006.

Rule 1-3.8 Right to Inventory

Explanation: Within subdivision (e) re designation of an inventory attorney, adds exception for a Florida practitioner who practices law as an employee of a governmental entity.

Reasons: Application of this relatively new rule – made effective in 2006 in *In Re Amendments to the Rules Regulating The Florida Bar*, 916 So 2d 655 (Fla. 2005) – has created confusion and some ill will toward the bar among selected non-practicing members. This proposed exception for government lawyers is intended to reduce some of that confusion and adverse sentiment within this particular subgroup.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed on March 15, April 6, and May 10, 2006 as to whether the rule should be of limited scope, continued as is, or repealed; staff was directed to draft options that included exceptions for government lawyers and agency counsel; after considering those drafts Disciplinary Procedure Committee approved the amendments excepting government lawyers from the inventory attorney designation requirement.

- Disciplinary Procedure Committee favorably reported substantive review by vote of 10-0 on May 10, 2006.
- On June 2, 2006 board meeting agenda for first reading.
- Board of Governors conceptually approved on June 2, 2006.
- Rules Committee discussed further clarifying edits suggested by board members and accepted by staff liaisons; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Rule 1-3.10 Appearance by Non-Florida Lawyer in a Florida Court

Explanation: Within subdivision (b), allows a Florida resident who has a pending application for admission to The Florida Bar and who has not previously been denied admission to The Florida Bar to move to appear pro hac vice in Florida courts; includes other non-substantive edits within subdivision (c).

Reasons: These proposed revisions were developed in connection with similar suggested amendments to the Florida Rules of Judicial Administration in the now final matter of *In Re Amendments to the Rules Regulating The Florida Bar and the Florida Rules of Judicial Administration – Multijurisdictional Practice of Law*, No. SC07-1844 (Fla. Sept. 11, 2008). The recommended amendments would make this rule consistent with Fla. R. Jud. Admin 2.510, as recently amended in that case and made effective on January 1, 2009. See June 14, 2007 Florida Bar staff memorandum from Lori Holcomb, Unlicensed Practice of Law Counsel, to Tony Boggs, Assistant to the Division Director of Lawyer Regulation, as staff liaison to the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 5.

Source: Rules of Judicial Administration Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 9-0 on July 13, 2007 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.
- Rules Committee favorably reported procedural review by voice and ballot vote of 6-0 on November 14, 2007.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Subchapter 1-4 Board of Governors

Rule 1-4.3 Committees

Explanation: Adds the chair of the Disciplinary Review Committee to the Executive Committee of the Board of Governors.

Reasons: Because much of the executive committee's business relates to disciplinary matters that may occur between bimonthly meetings of the board of governors, it was felt that inclusion of the chair of the board's disciplinary review committee would be a worthwhile addition to the executive committee to assure that the committee was more properly constituted to fulfill its mission.

Source: Program Evaluation Committee.

Background Information – Member Commentary / Committee Action:

- A proposal was made on May 31, 2007 to the Program Evaluation Committee to add both the Disciplinary Review Committee and Program Evaluation Committee chairs to the Executive Committee; Program Evaluation Committee discussed the proposal and decided to conduct a program evaluation in 2007-08 regarding the composition of both the Executive Committee and the Strategic Planning Committee; no further action was taken at that time and the proposal was withdrawn from board review; after reviewing the results of a survey that was distributed to the full Board of Governors, as well as several past presidents of The Florida Bar, and holding several committee discussions on this topic, Program Evaluation Committee voted unanimously in favor of adding only the chair of the Disciplinary Review Committee to the composition of the Executive Committee on October 4, 2007. *See* report of the 2007-08 Program Evaluation Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 6-14.

- Program Evaluation Committee favorably reported substantive and strategic plan review by voice vote of 5-0 on December 13, 2007.

- On December 14, 2007 board meeting agenda for first reading;

- Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on January 7, 2008.

- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.

Board Action: Board of Governors approved on February 1, 2008.

Subchapter 1-7 Membership Fees and Fiscal Control

Rule 1-7.5 Retired, Resigned, Inactive, Delinquent Members

Explanation: Deletes "resigned" members from the listing of those members who may not practice law until reinstated; revises title likewise.

Reasons: Editorial amendment to delete outdated reference to “resigned” members, a term that was eliminated when the concept of “disbarment on consent” was formalized effective in 2006. *See In Re Amendments to the Rules Regulating The Florida Bar*, 916 So.2d 655 (Fla. 2005) and extract of materials from June 1, 2006 meeting of the Program Evaluation Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 15-17.

Source: Program Evaluation Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed and proposed on March 15, 2006.
- On April 7, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/email vote of 7-0 on May 12, 2006.
- Program Evaluation Committee favorably reported substantive review by vote of 8-0 on June 1, 2006.

Board Action: Board of Governors approved on June 2, 2006.

Subchapter 1-12 Amendments

Rule 1-12.1 Amendment to Rules; Authority; Notice; Procedures; Comments

Explanation: Within subdivisions (a) and (f), clarifies language regarding those chapters of the Rules Regulating The Florida Bar that the Board of Governors of The Florida Bar has authority to unilaterally amend; deletes outdated reference to Schedule A of the former designation plan.

Reasons: Editorial amendment, to delete outdated reference to schedule A of the Florida Designation Plan which sunsetted on June 30, 1996, and to further clarify which chapters of the Rules Regulating The Florida Bar that the board of governors has authority to amend without additional Supreme Court approval.

Source: Bar Staff.

Background Information – Member Commentary / Committee Action:

- Proposed by staff and referred to Program Evaluation Committee.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.
- Program Evaluation Committee favorably reported substantive and strategic plan review unanimously on March 19, 2008.

- Rules Committee favorably reported procedural review by voice vote of 4-0 on April 30, 2008.

- Bar staff requested waiver of second reading at May 30, 2008 board meeting.

Board Action: Board of Governors approved waiver of second reading and the proposed amendment on May 30, 2008.

Chapter 2 Bylaws of The Florida Bar

Subchapter 2-4 Officers

Rule 2-4.5 Nominations for President-Elect

Explanation: In connection with separate amendments to Standing Board Policy 2.20, deletes the second paragraph of subdivision (b) and all of subdivision (c) which contain specific time frames for campaigning for president-elect.

Reasons: Current language seems to impose an absolute prohibition on campaigning for president-elect by anyone prior to November 15, which would likely be subject to a successful constitutional challenge on First Amendment grounds. Separate bar policy more properly addresses certain restrictions on those candidates who willingly contract with The Florida Bar for particularized campaign aid in exchange for such limitations. *See* August 3, 2007 memorandum from the Hon. Morris Silberman, chair of The Florida Bar's 2006-07 Presidential Election Committee, to the Board of Governors of The Florida Bar (discussing these issues and including a copy of Standing Board Policy 2.20 as adopted) in Appendix D at 18-34.

Source: Presidential Election Committee.

Background Information – Member Commentary / Committee Action:

- Presidential Election Committee favorably reported by unanimous vote on August 3, 2007.

- On August 17, 2007 Board of Governors agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 6-0 on September 18, 2007 conference call.

- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0.

Board Action: Board of Governors approved on October 5, 2007.

Subchapter 2-7 Sections

Rule 2-7.3 Creation of Sections and Divisions

Explanation: Conforms list of section titles due to a merger between the Practice Management and Development Section and the General Practice, Solo and Small Firm Section; re-designates other affected subdivision entries as necessary.

Reasons: Editorial amendment, to reflect section name changes.

Source: Program Evaluation Committee.

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee proposed and favorably reported merger of two sections by vote of 10-0 on May 31, 2007.
- Board of Governors conceptually approved merger of two sections on June 1, 2007, effective July 1, 2007.
- Program Evaluation Committee favorably reported substantive review of proposed amendment by voice vote of 6-0 on August 16, 2007.
- On August 17, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 5-0 on September 19 conference call.
- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

Board Action: Board of Governors approved on October 5, 2007.

Chapter 3 Rules of Discipline

Subchapter 3-2 Definitions

Rule 3-2.1 Generally

Explanation: Within subdivision (p) re designated reviewer, codifies that a designated reviewer for a specially created grievance committee will be selected by the president and approved by the board of governors.

Reasons: Clarifying amendment – the current rule is silent as to appointment of a designated reviewer for a specially created grievance committee.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on January 31, 2008.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.
- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.

- On March 28, 2008 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Subchapter 3-3 Jurisdiction to Enforce Rules

Rule 3-3.2 Board of Governors of The Florida Bar

Explanation: Within subdivision (b) re authority to file complaints based on felony charges, adds that a grievance committee chair's decision to not file a complaint may be reviewed by the full committee, which may affirm or reverse the chair's decision; also, in connection with separate proposed amendments to rule 3-7.2, within the list of specific events that authorize the filing of a formal lawyer disciplinary complaint, adds a decision of the Florida Supreme Court imposing judicial discipline in an action brought by the Judicial Qualifications Commission; includes other non-substantive edits, adds appropriate subdivision titles and numbers consistent with controlling editorial protocols, and re-designates other affected subdivision entries as necessary.

Reasons: Proposed revisions in new subdivision (b)(5) codify policy preferences to authorize a grievance committee chair to singularly approve a formal complaint on felony charges, yet also allow the full committee to reconsider any chair's unilateral decision against such action. Proposed revisions in new subdivision (b)(6) give full faith and credit to prior actions of the Supreme Court of Florida with regard to Judicial Qualifications Commission proceedings. If an order of the court removes a judge from office, this suggested amendment would provide that the facts found in the judicial misconduct proceedings are conclusively proved for purposes of any lawyer discipline proceedings. The proposed revision would not preclude the submission of additional evidence but would eliminate the need to litigate facts already proved with the same standard of proof.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee deferred action on March 9, 2007; Disciplinary Procedure Committee directed staff on March 29, 2007 to consider amendments to 3-3.2(b)(5) allowing for full grievance committee review of a decision of the chair to not file a complaint based on felony criminal charges; staff was also directed to draft amendments to other rules to provide that findings of the court would be conclusive proof, in bar proceedings, of the facts found by the court in the JQC proceedings; Disciplinary Procedure Committee developed and

discussed on March 9 and March 29, 2007; Disciplinary Procedure Committee favorably reported substantive review by vote of 5-1 on May 31, 2007 with "may" substituted for "shall" in 3-7.2(m)(2).

- Under consideration by Board of Governors at June 1, 2007 meeting; on August 17, 2007 Board of Governors meeting agenda for first reading; Board of Governors referred back to Disciplinary Procedure Committee for discussion of comments regarding the provision of the proposed amendment that makes findings of fact in Florida judicial disciplinary cases conclusive proof in Florida lawyer disciplinary cases; comments were received from one member.

- Disciplinary Procedure Committee deferred on August 31, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on January 18, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.

- Revised amendment on March 28, 2008 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Rule 3-3.3 Counsel for The Florida Bar

Explanation: Clarifies that a member of a grievance committee may represent the bar in disciplinary cases before a referee or court if the case was considered by a grievance committee other than the one on which the member serves; includes other non-substantive edits and new subdivision titles consistent with controlling editorial protocols.

Reasons: Occasionally the need for counsel with expertise in a particular field of law arises in bar disciplinary proceedings, but the bar has no one on its staff with the desired level of knowledge. Frequently an experienced practitioner of the sort needed for such matters will be located, but is serving on a grievance committee and is therefore disqualified from representing the bar in these cases. This suggested amendment would allow representation of the bar by a member of a grievance committee at the trial and appellate levels of a disciplinary matter, as long as the grievance committee on which the bar member serves had no role in processing the disciplinary case on which the member is asked to act as bar counsel. See July 30, 2007 memorandum from Andrew B. Sasso, chair of the Disciplinary

Procedure Committee of the Board of Governors of The Florida Bar to the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 35-36.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on March 9, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0 on March 29, 2007.

- Rules Committee favorably reported procedural review by fax / e-mail ballot of 6-0 on May 11, 2007.

- On June 1, 2007 board meeting agenda for first reading.

Board Action: Board of Governors approved on August 17, 2007.

Subchapter 3-5 Types of Discipline

Rule 3-5.4 Publication of Discipline

Explanation: Proposed new rule, to codify court and bar policy regarding publication of disciplinary sanctions in the *Southern Reporter* and *The Florida Bar News*, and on The Florida Bar's website.

Reasons: The Special Commission on Lawyer Regulation recommended publication of disciplinary sanctions on The Florida Bar's website and the board of governors agreed. *See* extract of report and recommendations of The Florida Bar's Special Commission on Lawyer Regulation, full report available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/370A16A14B04DC678525718400568E7E/\\$FILE/SCLawyerReg%20Report.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/370A16A14B04DC678525718400568E7E/$FILE/SCLawyerReg%20Report.pdf?OpenElement) (particularly Item No. 11, discussing these issues) in Appendix D at 37-41.

Source: Special Commission on Lawyer Regulation and Florida Supreme Court directive.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on January 18, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 29, 2008.

- On March 28, 2008 board meeting agenda for first reading.

- Disciplinary Procedure Committee discussed on April 29, 2008 and, upon review of one request to further amend the rule and essentially reverse the effect of

the pending recommended amendments, declined to pursue action seeking board reconsideration of its prior position.

- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Subchapter 3-6 Employment of Certain Attorney or Former Attorneys

Rule 3-6.1 Generally

Explanation: Extends the prohibitions regarding direct client contact and the handling of trust funds and property to all entities providing legal services when hiring an individual otherwise subject to this rule; clarifies that the employment restrictions and reporting requirements apply to law firms and other agencies through which legal services are provided.

Reasons: As now written, rule 3-6.1 does not clearly include within its definition of "authorized business entity" such places as state attorneys' or public defenders' offices – these proposed revisions are intended to address those shortcomings.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 8-0 on January 25, 2007.

- On March 30, 2007 Board of Governors meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax / e-mail ballot of 6-0 on May 11, 2007.

Board Action: Board of Governors approved on June 1, 2007.

Subchapter 3-7 Procedures

Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct (Professional Misconduct in Foreign Jurisdiction)

Explanation: This is the first of two different proposals for amendment of this rule. Within subdivision (l)(2), allows the Supreme Court of Florida to issue an interim order suspending a member who is the subject of certain final disciplinary adjudications in another court or disciplinary authority; includes other non-substantive edits within subdivision (l)(1).

Reasons: This court, by letter dated May 17, 2007, requested that the bar study this issue and propose, if appropriate, suitable amendments to the Rules Regulating

The Florida Bar that would set forth an expedited process to restrict the practice of law in Florida by attorneys who are suspended or disbarred in other states or other jurisdictions. This proposal is in response to that request.

Source: Court request and Disciplinary Procedure Committee. See May 17, 2006 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The Florida Bar (discussing this issue) in Appendix D at 42-43.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on July 10, 2006.
- On first reading at July 28, 2006 board meeting.
- Rules Committee discussed and approved further clarifying edits suggested by a board member and the edits were accepted by the staff liaison; Rules Committee favorably reported with additional edits by voice vote of 6-0 on August 29, 2006 conference call; after clarification from court personnel re certain purely stylistic edits in question, those items were withdrawn; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On July 31, 2008, after initial Notice of Intent to File Petition was published in the August 1, 2008, issue of the bar *News*, staff proposed additional language to clarify the conditions applicable to issuance of emergency suspension orders; see July 31, 2008 Florida Bar staff memorandum from Kenneth L. Marvin, Director of Lawyer Regulation, John T. Berry, Director of the Legal Division, and Kathy J. Bible, Staff Liaison to the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar, to the Executive Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 44-50; reviewed and favorably reported by Disciplinary Procedure Committee by unanimous vote on August 1, 2008.

Board Action: Board of Governors first approved on September 29, 2006; Executive Committee of the Board of Governors approved additional edits of July 31, 2008 by e-mail vote of 10-0 on August 1, 2008.

Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct (Discipline Upon Removal from Judicial Office)

Explanation: This is second of two different proposals for amendment of this rule. In connection with separate proposed amendments to rule 3-3.2, adds new subdivision (m), re discipline upon removal from judicial office, to require notice to

the bar of any order of the Supreme Court removing a member from judicial office; upon receipt of such order, also authorizes the bar to file a formal complaint with the court and to seek appropriate discipline; further provides that the findings of fact by the court in any proceedings resulting in the removal of a member from judicial office shall be conclusive proof of such facts in bar disciplinary proceedings.

Reasons: Similar to suggested amendments to rule 3-3.2, this proposal gives full faith and credit to prior actions of the Supreme Court of Florida in Judicial Qualifications Commission proceedings. If an order of the court removes a judge from office, this amendment would provide that the facts found in those judicial misconduct proceedings are conclusively proved for purpose of Florida Bar lawyer discipline proceedings. This proposal does not preclude the submission of additional evidence, but eliminates the need to litigate facts already proved with the same standard of proof.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on March 9, 2007; Disciplinary Procedure Committee directed staff on March 29, 2007, to consider amendments to 3-3.2(b)(5) allowing for full grievance committee review of a decision of the chair to not file a complaint based on felony criminal charges; staff was also directed to draft amendments to other rules (3-7.2) to provide that findings of the court would be conclusive proof, in bar proceedings, of the facts found by the court in the JQC proceedings.

- Disciplinary Procedure Committee favorably reported substantive review by vote of 5-1 on May 31, 2007, with "may" substituted for "shall" in subdivision (m)(2).

- Under consideration on June 1, 2007 Board of Governors meeting agenda; on August 17, 2007 Board of Governors meeting agenda for first reading; returned to Disciplinary Procedure Committee for discussion of comments regarding the provision of the proposed amendment that makes findings of fact in Florida judicial disciplinary cases conclusive proof in Florida lawyer disciplinary cases; comments were received from one member;

- Disciplinary Procedure Committee deferred on August 31, 2007; Disciplinary Procedure Committee favorably reported further substantive review by voice vote of 5-0 on January 18, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.
 - On March 28, 2008 board meeting agenda for first reading.
 - Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.
- Board Action:* Board of Governors approved on May 30, 2008.

Rule 3-7.4 Grievance Committee Procedures

Explanation: Within subdivision (l), adds provision authorizing the return of a matter to the grievance committee for further action if, before the filing of any charges, bar counsel, staff counsel and the designated reviewer all agree that there are appropriate reasons for not filing a formal complaint.

Reasons: From time to time probable cause may exist to believe that a violation of the rules has occurred, and a grievance committee will enter such a finding. However, in preparing the case for filing, bar counsel may later discover that clear and convincing evidence of guilt does not exist. Under current rules, the bar is required to file a formal complaint – only to thereafter dismiss it. Such a requirement is both cumbersome and an unnecessary use of judicial resources. This proposed amendment eliminates that requirement and allows return of the matter to the grievance committee for further consideration if bar counsel, staff counsel, and the designated reviewer all agree to such action.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on December 7, 2006 and deferred vote; Disciplinary Procedure Committee discussed and favorably reported substantive review by vote of 7-0 on January 3, 2007.
- On January 26, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by e-mail/fax ballot of 7-0 on March 8, 2007.

Board Action: Board of Governors approved on March 30, 2007.

Rule 3-7.6 Procedures Before a Referee (Referees)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (a), adds language requiring that, before a judge may be appointed to serve as a referee, the judge must have served as a judicial referee under these rules at least once or have certified to the Supreme Court that the judge

has reviewed pertinent referee training materials; adds appropriate subdivision titles and designations consistent with controlling editorial protocols.

Reasons: This proposal and its requirements for service as a referee stem from Recommendation 7 of the Special Committee on Lawyer Regulation re selection of referees, which was expanded by the Disciplinary Procedures Committee to include minimum qualifications. *See* extract of report and recommendations of The Florida Bar's Special Commission on Lawyer Regulation, full report available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/370A16A14B04DC678525718400568E7E/\\$FILE/SCLawyerReg%20Report.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/370A16A14B04DC678525718400568E7E/$FILE/SCLawyerReg%20Report.pdf?OpenElement) (particularly Item No. 7, discussing this issue) in Appendix D at 51-55.

Source: Special Commission on Lawyer Regulation.

Background Information – Member Commentary / Committee Action:

- Report and referrals discussed at Disciplinary Procedure Committee meeting on August 25, 2006 and subcommittees were appointed; one subcommittee submitted its written recommendations on September 1, 2006 and orally reported on November 1; another subcommittee reported its recommendations on January 3, 2007; Disciplinary Procedure Committee favorably reported the subcommittees' recommendations and the proposed amendments in the form submitted by a vote of 7-0 on a conference call on January 3, 2007.

- On January 26, 2007 board meeting agenda for first reading; shown on March 30, 2007 board meeting agenda as under consideration pending information from the Supreme Court.

- Referred to Council of Circuit Court Judges for comment April 25, 2007; response from the conference opposed to the amendments was received on June 21, 2007.

- On August 31, 2007 Disciplinary Procedure Committee tabled reconsideration of this previously approved amendment after debate and directed staff to redraft the proposal dropping the five-year minimum requirement for service as a bar referee and inserting language stressing educational classes and materials, plus a grandfather clause for judges who have previously served as a bar referee.

- Disciplinary Procedure Committee approved amended proposal on December 13, 2007 after hearing that the Judicial Administration Committee of the Florida Council of Circuit Judges had unanimously endorsed that rewrite. *See* extract of materials from December 13, 2007 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 56-58.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 8-0 on January 18, 2008 conference call after further revisions changing the certification requirement, from the clerk of the Supreme Court to the chief judge who appointed the referee. *See* extract of materials from January 18, 2008 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing these issues) in Appendix D at 59-63.

- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.

- On February 1, 2008 board of governors meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 6-0 on March 5, 2008 conference call.

- Board of Governors approved on March 28, 2008.

- On April 29, 2008, Disciplinary Procedure Committee considered the request for reconsideration submitted by a judge and a member; the request for reconsideration was withdrawn by the member after the judge indicated the executive director had addressed and satisfied his concerns.

Board Action: Board of Governors approved on March 28, 2008 and confirmed on April 29, 2008.

Rule 3-7.6 Procedures Before a Referee; Costs (Referee's Report and Cost of Review or Reproduction)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (m), adds provision that the referee's report and the record shall not be filed until disposition of a motion to assess costs or expiration of the time for filing such motion; within subdivision (q), adds requirement that a party file a statement of costs and a request for payment of costs within 15 days after written notice by the referee that the referee's report has been completed or at the time that a guilty plea for consent judgment is filed; clarifies that a failure to move to assess costs when necessary, without good cause, constitutes a waiver; adds comment specifying that provisions for the assessment of disciplinary costs before the Supreme Court are addressed in rule 3-7.7.

Reasons: The court, by letter dated May 23, 2007, asked the bar to consider such a proposal. *See* May 23, 2007 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The

Florida Bar (discussing this issue) in Appendix D at 64-65. These suggested amendments are in response to that query.

Source: Court request and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on June 18, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 9-0 on July 13, 2007 conference call.

- On August 17, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 6-0 on September 18, 2007 conference call.

- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

- On July 31, 2008, after an initial Notice of Intent to File Petition was published in the August 1, 2008 issue of the bar *News*, staff proposed edits to subdivision (q)(5) to make the rules internally consistent and specify what is required of referees and the parties when requesting reimbursement of costs from the opposing party and in objecting to the opposing party's request for cost reimbursement; *see* July 31, 2008 Florida Bar staff memorandum from Kenneth L. Marvin, Director of Lawyer Regulation, John T. Berry, Director of the Legal Division, and Kathy J. Bible, Staff Liaison to the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar, to the Executive Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 44-50; reviewed and favorably reported by Disciplinary Procedure Committee by unanimous vote on August 1, 2008.

Board Action: Board of Governors first approved by voice vote on October 5, 2007; Executive Committee of the Board of Governors approved additional edits of July 31, 2008 by e-mail vote of 10-0 on August 1, 2008.

Rule 3-7.7 Procedures Before Supreme Court of Florida (Procedure for Review – Judgment of Supreme Court of Florida)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (c)(6), adds new provisions specifying that, where appropriate, the judgment from the Supreme Court shall indicate the party to whom costs are awarded, the persons to whom restitution is ordered, or the persons to whom a fee is

ordered to be forfeited; adds new subdivision title consistent with controlling editorial protocols.

Reasons: This suggested amendment came about during discussion of the court's interest in possible changes to rules 3-7.6(m) & (q) and rule 3-7.7(c)(7). *See* May 23, 2007 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The Florida Bar (discussing this issue) in Appendix D at 64-65. After the bar's review of costs in general, this proposal was considered to be necessary to further clarify costs judgments.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by vote of 8-0 on August 31, 2007 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.
- On October 5, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by voice and ballot vote of 6-0 on November 14, 2007.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Rule 3-7.7 Procedures Before Supreme Court of Florida (Procedure for Review – Procedures on Motions to Tax Costs)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (c), adds new procedures for motions to tax costs within 10 days of supreme court review in particular cases; allows 10 days for objection by the party from whom costs are sought; states that failure to timely move or object, without good cause, constitutes a waiver; upon timely objection or court direction, allows for remand to the referee for supplemental report regarding costs and assessment; further allows a party to seek review of any supplemental report in the same manner as any other report is reviewed; adds further clarification within comment.

Reasons: The court, by letter dated May 23, 2007, asked the bar to consider new language within this rule. *See* May 23, 2007 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The Florida Bar (discussing this issue) in Appendix D at 64-65. These proposed changes are in response to that request.

Source: Court request and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on June 18, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 9-0 on July 13, 2007 conference call.

- On August 17, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 6-0 on September 18, 2007 conference call.

- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

- On July 31, 2008, after an initial Notice of Intent to File Petition was published in the August 1, 2008 issue of the bar *News*, staff proposed edits to subdivision (c)(7) and the comment to make the rules internally consistent and specify what is required of referees and the parties when requesting reimbursement of costs from the opposing party and in objecting to the opposing party's request for cost reimbursement; *see* July 31, 2008 Florida Bar staff memorandum from Kenneth L. Marvin, Director of Lawyer Regulation, John T. Berry, Director of the Legal Division, and Kathy J. Bible, Staff Liaison to the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar, to the Executive Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 44-50; reviewed and favorably reported by Disciplinary Procedure Committee by unanimous vote on August 1, 2008.

Board Action: Board of Governors first approved by voice vote on October 5, 2007; Executive Committee of the Board of Governors approved additional edits of July 31, 2008 by e-mail vote of 10-0 on August 1, 2008.

Rule 3-7.11 General Rules of Procedure (Contempt – Order to Show Cause)

Explanation: This is first of three different proposals for amendment of this rule. In connection with separate proposed amendments to rule 4-8.4(g), within subdivision (f) re contempt, provides a summary process for addressing a respondent's failure to respond to official bar inquiries in disciplinary proceedings; requires a bar petition to the supreme court, for contempt and an order to show cause; provides 10 days for respondent's response; allows for assignment of matters to a referee for factual findings; and authorizes suspension in such cases.

Reasons: Current rules require a member's response to all official bar inquiries. Under those rules, a failure to respond must be processed through the grievance committee, referee, and appellate processes before the transgression may ever be addressed. In appropriate cases, a summary process should be available to deal with instances where a respondent has improperly failed to respond and thereby delayed a just resolution of a disciplinary matter. These proposed amendments offer such a process.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on August 31, 2007; Disciplinary Procedure Committee directed staff to draft an expedited process for dealing with this type of contempt on January 18, 2008; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on January 31, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.

- On March 28, 2008 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Rule 3-7.11 General Rules of Procedure (Subpoenas and Contempt)

Explanation: This is second of three different proposals for amendment of this rule. In connection with separate proposed amendments to rule 5-1.2, within subdivision (d) and (f), eliminates redundancy between the two rules and clarifies the procedure for dealing with a respondent's failure to comply with subpoenas for trust account records.

Reasons: Current rules – rule 3-7.11 and rule 5-1.2 – create two separate processes for administering cases of contempt by respondents. This suggested amendment and the companion revisions to rule 5-1.2(g) remove the process within rule 5-1.2 and incorporate it as necessary into that still provided for in rule 3-7.11. Confusion created by the two existing rules should be eliminated.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee generally approved draft revisions on May 8, 2007, but suggested other clarifying edits.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0, with further minor language and editorial changes, on May 31, 2007.

- On August 17, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 6-0 on September 18, 2007 conference call.

- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

Board Action: Board of Governors approved on October 5, 2007.

Rule 3-7.11 General Rules of Procedure (Proceedings After Disbarment)

Explanation: This is third of three different proposals for amendment of this rule. Creates new subdivision (i), regarding proceedings after disbarment, authorizing by consent or court order: the audit of a respondent's trust, operating, or personal bank accounts; the respondent's provision of an affidavit regarding personal and business finances; or the respondent's maintenance of a current mailing address for a stated period of time.

Reasons: The discontinuance of the option of a "disciplinary resignation" – replaced by "disbarment on consent" – effectively ended judicial recognition of the bar practice, in disciplinary cases involving trust account irregularities, of auditing the trust and other financial accounts of respondents after the effective date of their disciplinary resignations. *See In Re Amendments to the Rules Regulating The Florida Bar*, 978 So. 2d 91 (Fla. 2007). In order to confirm the continuation of this practice, this proposed amendment is considered necessary.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on April 6, 2006; the purposes of such post-resignation audits were acknowledged to be protection of the public; assistance to prosecutorial authorities by referral of detailed information, and assistance to the Clients' Security Fund by identifying possible alternative sources of recovery of funds. Disciplinary Procedure Committee heard a suggestion from staff that any change should preserve the viability of disbarment on consent and that loading up same with additional requirements would likely result in fewer agreements for disbarment. After debate the Disciplinary Procedure Committee

agreed that staff should draft an amendment providing for authority for post-resignation audits independent of agreements for disbarment.

- Disciplinary Procedure Committee favorably reported substantive review by vote of 10-0 on May 10, 2006.
- On June 2, 2006 board meeting agenda for first reading.
- Board of Governors conceptually approved on June 2, 2006.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Rule 3-7.13 Incapacity Not Related to Misconduct

Explanation: Broadens application of the rule to a bar member's incapacity or hospitalization under the authority of "applicable law" – as well as the Florida Mental Health Act – when that lawyer is incapable of practicing due to physical or mental illness, incapacity, or other infirmity; deletes outdated references to "incompetence" throughout; adds provision allowing a lawyer to consent to incapacity not for misconduct in the same manner as other consent judgments in rule 3-7.9; adds subdivision titles consistent with controlling editorial protocols and redesignates other affected entries as necessary.

Reasons: The rule as currently written limits its application to hospitalizations under the authority of the Florida Mental Health (or “Baker”) Act. However, there are other state and federal laws that authorize involuntary hospitalization. Also, “incompetence” is no longer used in the relevant statutes. These proposed amendments are intended to update rule language.

Source: Bar staff and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on August 31, October 25, and December 13, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 8-0 on December 13, 2007 conference call.
- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.
- On February 1, 2008 Board of Governors meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 6-0 on March 5, 2008 conference call.

Board Action: Board of Governors approved on March 28, 2008.

Rule 3-7.17 Vexatious Conduct and Limitation of Filings

Explanation: New rule, proposing procedures – for the bar to seek, a referee to recommend, or the court to issue – an order prohibiting vexatious conduct and/or limiting other activities of those engaged in such behavior.

Reasons: The Supreme Court has the common law authority to enter orders of contempt. This proposal codifies that authority as a rule to better forewarn those members of the bar who might be inclined to engage in vexatious conduct.

Source: Bar staff and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on July 10, July 27, and August 25, 2006; Disciplinary Procedure Committee favorably reported substantive review of redrafted amendment by voice vote of 7-0 on September 28, 2006.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on November 6, 2006; Rules Committee reaffirmed procedural review by voice vote of 4-0 during conference call on November 6, 2006.

- On December 8, 2006 Board of Governors meeting agenda for first reading.

- Board of Governors approved by voice vote on January 26, 2007; withdrawn from submission to the court on March 24, 2008 by bar staff due to opinion in *The Florida Bar v. Thompson*, 979 So. 2d 917 (Fla. 2008), pending further edits by Disciplinary Procedure Committee; Disciplinary Procedure Committee reviewed and favorably reported substantive review of the rewrite by vote of 6-0 on April 29, 2008.

- Rules Committee favorably reported procedural review of rewrite by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Chapter 4 Rules of Professional Conduct

Subchapter 4-1 Client-Lawyer Relationship

Rule 4-1.5 Fees and Costs for Legal Services (Duty to Communicate Basis or Rate of Fee or Costs to Client)

Explanation: Within subdivision (e) adds requirement that a fee for legal services that is nonrefundable in any part must be confirmed in writing and must explain the parties' intent as to its nature and amount; also in subdivision (e) and commentary, clarifies that the test of reasonableness is applicable to all fees regardless of their characterization; and, within commentary, clarifies various types

of fees, their ownership, and their appropriate placement in a lawyer's financial accounts.

Reasons: The proposed amendments within subdivision (e) are recommended because of continuous misunderstandings and disputes concerning what is intended by the term "nonrefundable" in lawyer fee contracts, and made further necessary by the fact that labeling a fee as "nonrefundable" does not immunize the fee from the reasonableness analysis with regard to excessiveness. Amendments to the commentary regarding a "retainer" are suggested and considered particularly helpful because of the widespread misuse and misunderstanding of this term. Other fee types are also defined for better understanding of those terms.

Source: Referral from a Board of Governors member and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed adding commentary describing the differences between a retainer and an advanced fee, including whether the payments must be held in trust, on March 9 & 29, 2007; Disciplinary Procedure Committee directed staff, on March 29, 2007, to substitute “confirmed in writing” for “in written form” to clarify that the client is not required to sign the document recording the terms of the fee agreement; staff was also directed to add commentary language describing “retainers,” “advanced fee deposits,” “flat fees,” and “nature and amount” of the fee, and language discussing the correct account into which the fees should be deposited.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on May 8, 2007.

- On June 1, 2007 Board of Governors meeting agenda for first reading.

- Rules Committee discussed on January 25, 2007; a non-substantive edit was proposed and accepted by the committee but a vote was deferred pending clarification of redundancy or omission of language in the rule; a revised amendment was proposed by Disciplinary Procedure Committee staff liaison and Rules Committee favorably reported procedural review by 7-0 e-mail vote on August 1, 2007.

Board Action: Board of Governors approved on August 17, 2007.

Rule 4-1.8 Conflict of Interest; Prohibited and Other Transactions

Explanation: Within subdivision (k), adds new subdivision title consistent with controlling editorial protocols; within comment re gifts to lawyers, the comment clarifies that “relatives” specified in subdivision (c) of the rule includes relatives by

both blood and marriage; within comment re financial assistance, clarifies that an attorney may advance costs for a client's "diagnostic" medical examination used for litigation purposes.

Reasons: Proposed amendments to the comment are meant to clarify the meaning of relative for purposes of the familial exemption to the general prohibition against lawyers preparing documents giving a substantial gift to the lawyer. The Florida Bar Ethics Hotline has received several inquiries whether relatives by marriage are included in the exception to the general prohibition. The proposed amendment to the commentary explicitly states that relatives by marriage are included in the exemption. The addition of "diagnostic" and "used for litigation purposes" provides further guidance to lawyers that only those medical tests that are intended for litigation purposes are included within the "expenses of litigation" which lawyers may advance to a client, as an exception to the general prohibition against providing financial assistance to a client. Other calls to The Florida Bar Ethics Hotline indicate that the recent addition to the commentary of the example of "expenses of medical examination" needs clarification that only those expenses related to the litigation may be advanced on behalf of the client, as opposed to expenses related to treatment.

Source: Bar staff and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on July 27, 2006; further clarifying edits suggested by a board member were discussed by Rules Committee and accepted by the Disciplinary Procedure Committee staff liaison.
- Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on August 29, 2006 conference call; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Rule 4-1.9 Conflict of Interest; Former Client

Explanation: Within subdivisions (b) and (c), adds provisions to clarify that a lawyer is prohibited from disclosing information relating to a former client's representation unless either permitted or required under the rules of professional conduct.

Reasons: The proposed change conforms Florida's conflict of interest rule more closely with the ABA Model Rule. The changes clearly distinguish between

disclosure and use of confidential information. Although both are currently prohibited, new subdivision (c) explicitly states within rule 4-1.9 that which is already stated in rule 4-1.6, so that lawyers have a clearer understanding of their obligations from review of only rule 4-1.9. The change assists lawyers by providing further guidance within rule 4-1.9 to clearly state their duties within this rule. The addition of "would require" also clarifies that lawyers may use confidential information that is required to be disclosed under the confidentiality rule as opposed to being able to use only that information that falls within a permissive exception to the confidentiality rule.

Source: Bar staff and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote 7-0 on July 27, 2006.

- Further clarifying edits suggested by Rules Committee chair were discussed and accepted by the Disciplinary Procedure Committee and bar staff; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on August 29, 2006 conference call; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.

- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Rule 4-1.18 Duties to Prospective Client

Explanation: Within comment, corrects reference to “paragraph” (d)(2)(i) of the rule to read “subdivision” (d)(2)(i).

Reasons: Editorial correction.

Source: Bar staff.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on July 27, 2006.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on August 29, 2006 conference call.

- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Subchapter 4-2 Counselor

Rule 4-2.4 Lawyer Serving as Third-Party Neutral

Explanation: In connection with separate proposed amendments to rule 4-3.3 adding this provision, deletes the final paragraph within comment regarding lawyer conduct in representing clients before a third-party neutral and whether third-party neutrals are considered a "tribunal" for purposes of rule 4-3.3.

Reasons: The recommended amendment moves commentary regarding the status of third-party neutrals as tribunals for purposes of the rule requiring candor toward the tribunal, from rule 4-2.4 to rule 4-3.3 because, logically, more lawyers would seek that information from rule 4-3.3.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on July 27, 2006.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on August 29, 2006 conference call.
- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Subchapter 4-3 Advocate

Rule 4-3.3 Candor Toward the Tribunal (Comment – duty of candor)

Explanation: This is first of three different proposals for amendment of this rule. In connection with separate proposed amendments to rule 4-2.4 deleting this provision, adds to commentary the final paragraph deleted from the comment to rule 4-2.4 regarding lawyer conduct in representing clients before a third-party neutral and whether third-party neutrals are considered a “tribunal” for purposes of this rule.

Reasons: The amendment moves commentary regarding the status of third-party neutrals as tribunals for purposes of the rule requiring candor toward the tribunal, from rule 4-2.4 to rule 4-3.3 because, logically, more lawyers would seek that information from rule 4-3.3.

Source: Professional Ethics Committee.

Background Information – Member Commentary / Committee Action:

- Professional Ethics Subcommittee favorably reported by voice vote on July 21, 2006.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on July 27, 2006.
- On September 29, 2006 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 4-3.3 Candor Toward the Tribunal (reorganization)

Explanation: This is second of three different proposals for amendment of this rule. Rearranges rule to more closely conform to ABA Model Rule – within subdivision (a)(1), adds requirement that a lawyer correct any false statement of material fact or law previously made to the tribunal by the lawyer; within subdivision (a)(4), clarifies the lawyer's obligation regarding offering false testimony; adds new subdivisions (b) and (d) to clarify criminal or fraudulent conduct and the extent of the lawyer's duties; within commentary deletes language indicating that a lawyer's obligation of candor may be different in criminal defense matters as opposed to civil matters, adds language regarding application of the rule to ancillary proceedings and presenting false evidence.

Reasons: In 2004, The Florida Bar proposed amendments to this rule to more closely conform it to ABA Model Rule 3.3, which was revised at the recommendation of the ABA Ethics Commission 2000. In reaction to that proposal, this court referred the issue back to the bar for further study in *In Re Amendments to the Rules Regulating The Florida Bar*, 933 So.2d 417 (Fla. 2006). The court observed that there were potential conflicts between the actual provisions in the rules and its commentary, noting that the commentary appeared to distinguish between the obligations of civil lawyers versus criminal defense lawyers. The court asked that the bar provide any justification for treating such cases differently. *See* April 24, 2006 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The Florida Bar (discussing this issue) in Appendix D at 66-68. The Professional Ethics Committee studied the issue further and determined that there was no justification for treating civil and criminal matters differently, and proposed these further amendments meant to reflect that there is no distinction between these matters.

Source: Professional Ethics Committee.

Background Information – Member Commentary / Committee Action:

- First considered by the Special Committee to Review the ABA Model Rules 2002 with modification; rejected by the Supreme Court of Florida and further study ordered, *In Re Amendments to the Rules Regulating The Florida Bar*, 933 So.2d 417 (Fla. 2006); Professional Ethics Committee approved changes to the rule on

September 15, 2006 that would more closely conform the rule to the ABA Model Rule, but making no difference between criminal defense lawyers and other lawyers in the rule (in declining to adopt the ABA concept that criminal defense lawyers' obligations may be different than other lawyers).

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on September 28, 2006.
- On September 29, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006.
- Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 4-3.3 Candor Toward The Tribunal (client perjury)

Explanation: This is third of three different proposals for amendment of this rule. Deletes comment regarding perjury by a criminal defendant, to reflect no difference between the obligations of a civil lawyer and a criminal lawyer regarding client perjury; and, within comment regarding remedial measures, deletes provisions regarding withdrawal, to reflect that withdrawal alone will likely never be an adequate remedial measure when there has been a misrepresentation to the court.

Reasons: In studying amendments to rule 4-3.3 at the request of the Supreme Court of Florida in *In Re Amendments to the Rules Regulating The Florida Bar*, 933 So.2d 417 (Fla. 2006), the Professional Ethics Committee voted to remove portions of the comment dealing with client perjury by a criminal defendant, to further reflect the bar's position that there is no difference between the obligations of a civil attorney and a criminal defense attorney. The existing commentary suggests that a criminal defense attorney's obligations may differ from an attorney in a civil matter. The amendments also reflect the Professional Ethics Committee's decision to withdraw Florida Ethics Opinion 90-6 regarding a criminal defense attorney's obligations when a client gives a false name and subsequent proceedings are brought under that false name. Commentary was added to the rule after Florida Ethics Opinion 90-6 was adopted, and now that this opinion has been withdrawn, the committee recommended its removal. The Professional Ethics Committee also recommended deletion of portions of the commentary under remedial measures, in recognition that withdrawal alone will rarely remedy a fraud on the court that has already been made, and strengthening of this concept by the recommended addition

of commentary noting that the lawyer's obligation is to ensure that disclosure of the fraud is made to the court. The Board of Governors also added commentary that the duty to take remedial measures does not apply in situations where the attorney represents the client in the defense of a perjury charge where the attorney did not represent the client in the matter giving rise to the charge.

Source: Professional Ethics Committee.

Background Information – Member Commentary / Committee Action:

- Professional Ethics Committee favorably reported on September 7, 2007.
- Disciplinary Procedure Committee made further amendments and favorably reported substantive review by voice vote of 8-0 on December 13, 2007; Disciplinary Procedure Committee amended to re-insert the following sentences: "The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. Disciplinary Procedure Committee also amended to delete the following proposed addition: "A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See terminology. Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood."
 - Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.
 - Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.
 - Disciplinary Procedure Committee amended by voice vote on January 31, 2008 and withdrew from first reading by the board on February 1, 2008; Disciplinary Procedure Committee voted 7-0 to reconsider and reject changes to subdivision (a)(1) and refer changes to the comment back to staff for redrafting on February 28, 2008; Disciplinary Procedure Committee favorably reported substantive review of the redraft by voice vote of 4-0 on April 29, 2008.
 - Rules Committee favorably reported procedural review by voice vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Subchapter 4-7 Information About Legal Services

Rule 4-7.2 Communications Concerning A Lawyer's Service (permissible content)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (b), clarifies that the content of a permissible advertisement or communication must be permitted by law, as well as truthful.

Reasons: At the request of the bar, the Supreme Court of Florida adopted amendments to the lawyer advertising rules in *In Re Amendments to the Rules Regulating The Florida Bar - Advertising*, 971 So.2d 763 (Fla. 2007). Among the amendments adopted by the court was an expansion of the permissible content of advertisements (if advertisements are limited to permissible content, they are exempt from filing and presumed to be non-misleading). After the exemptions were adopted, the bar was contacted by the Florida Department of State, which indicated that Florida Statutes §§ 256.05 and 256.051 prohibit the use of the U.S. and State of Florida flags in advertisements. The changes proposed would indicate in subdivision (b) that the presumption of permissible and non-misleading nature of advertisements applies if the content is true and permitted by law, to address the issue raised by the Florida Department of State.

Source: Bar staff and Florida Department of State.

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported procedural review by fax/e-mail vote of 6-0 on November 28, 2006.

- Disciplinary Procedure Committee favorably reported substantive review on December 7, 2006.

- Waiver of Notice and waiver of second reading approved by the board on December 8, 2006.

- Board of Governors conditionally approved on December 8, 2006.

Board Action: Board of Governors approved on January 26, 2007.

Rule 4-7.2 Communications Concerning A Lawyer's Services (prohibitions and general regulations – use of celebrity and sounds)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (b) re permissible content of advertisements and unsolicited written communications, adds specific citation to (c)(1) to better clarify that certain advertisement content is presumed not to be misleading or deceptive; removes existing language from subdivision (b) re “exempt from the filing and review requirement,” which was intended to convey the same concept as proposed new revisions in subdivision (b), but considered redundant and confusing; within subdivision (c) re prohibitions and general regulations governing content of advertisements and unsolicited written communications, adds as new subdivisions

(15) & (16), respectively, prohibitions on the use of a celebrity and prohibited sounds, to be deleted and transferred from rule 4-7.5 re television or radio appearances; within comment, adds new clarifying entry re the use of sounds, also to be deleted and transferred from rule 4-7.5.

Reasons: The proposed amendments move rules provisions from rule 4-7.5(b)(1) to new subdivisions (c)(15) and (c)(16) of rule 4-7.2, making rules that were previously applicable only to television and radio applicable to all media, in recognition that other media now have similar capabilities as television and radio and simplifying the rules so that they are more rules of general application. The amendments also would change the prohibition against all background sound to a prohibition against only those sounds which are deceptive, misleading, manipulative, or likely to confuse the listener. This recommended change conforms the rule on background sound more closely to rule 4-7.2(c)(4) on prohibited verbal and visual portrayals and makes the rule no more restrictive than necessary to protect the public from information that is misleading. *See* Gary Blankenship, *Board backs court over “announcers” in lawyer radio and TV ads*, *The Florida Bar News*, November 1, 2007, at 22, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/F1B18020FFDC47A2852573800059268D>, materials from the Board Review Committee on Professional Ethics prepared for the December 14, 2007 meeting of the Board of Governors of The Florida Bar, and *Ad Committee seeks change to rule regarding spokespersons*, *The Florida Bar News*, December 15, 2007, at 3, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/83EA65D84174870A852573A9006B2803> (discussing these issues) in Appendix D at 69-79.

Source: Standing Committee on Advertising.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Advertising approved via voice vote on June 29, 2007 and September 7, 2007.
- Disciplinary Procedure Committee favorably reported substantive review by 7-0 voice vote on October 4, 2007, with the following changes: (1) deleting "or any spokesperson" in proposed subdivision (c)(15) to clarify that the prohibition is against the use of celebrities, not voices that can be recognized because a person is a professional announcer; and (2) deleting "in an advertisement or unsolicited written communication" in proposed subdivision (c)(15); Board Review Committee favorably reported via 7-0 voice vote on November 5, 2007, accepting the Disciplinary Procedure Committee amendment of "or any spokesperson" in proposed subdivision (c)(15) and the Disciplinary Procedure Committee

amendment of "in an advertisement or unsolicited written communication" in proposed subdivision (c)(15) and with the following change: changing the word "viewer" to "listener" in proposed subdivision (c)(16).

- Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on January 7, 2008.

- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.

Board Action: Board of Governors approved on February 1, 2008.

Rule 4-7.4 Direct Contact With Prospective Clients (grammar change)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (a), corrects grammatical error regarding solicitation “on” rather than “in” a lawyer’s behalf.

Reasons: Editorial / grammatical edit.

Source: Bar staff.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Advertising favorably reported by voice vote June 29, 2007.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on October 4, 2007.

- Board Review Committee on Professional Ethics favorably reported substantive review by voice vote of 7-0 on November 5, 2007; on December 14, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on January 7, 2008.

- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.

Board Action: Board of Governors approved on February 1, 2008.

Rule 4-7.4 Direct Contact With Prospective Clients (injunction for protection)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (b), adds new prohibition against a lawyer sending direct mail to the respondent in proceedings involving a petition for injunction for

protection against any form of physical violence if the lawyer knows or should know such individual has not been served with notice of process in the matter.

Reasons: The Florida Bar's Citizens Forum reviewed newspaper articles regarding a lawyer who had sent direct mail to the respondent in a petition for a domestic violence injunction prior to service of process on the respondent. Law enforcement officials were quoted as saying it is vital for the safety of domestic violence victims for respondents to remain unaware of the petition until service of process by law enforcement. The Citizen's Forum also noted that a bill had been proposed in the legislature to address the issue. The Citizen's Forum voted to refer the matter to the Standing Committee on Advertising, noting that the forum is strongly in favor of proposing a rule change to address this public safety issue and protect victims of domestic violence. *See* February 12, 2007 correspondence from Edwin A. Scales, III, Chair of The Florida Bar's Citizens Forum, to Jesse H. Diner, Chair of the Legislation Committee of the Board of Governors of The Florida Bar, and Dominic M. Caparello, Chair of the Rules Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 80-87. The Standing Committee on Advertising agreed with the Citizen's Forum that this issue was one of public safety, and broadened the rule to apply to anyone who is seeking an injunction against violence of any kind. Indeed, during the 2008 Legislative Session, SB 870 was proposed, to amend §741.30, F.S. and to provide an exemption from public-records requirements for a petition for an injunction for protection against domestic violence until the petition is personally served on the respondent. However, the measure had no House companion and it died in committee without further legislative action.

Source: Citizens Forum.

Background Information – Member Commentary / Committee Action:

- Citizens Forum voted on January 31, 2008 to refer the matter to the appropriate substantive committee to consider a rule change.
- Standing Committee on Advertising voted 4-0 on March 11, 2008 to adopt the proposed rule change; may request waiver of second reading at May 30, 2008 board meeting.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0 on April 29, 2008.
- Rules Committee favorably reported procedural review by voice vote of 4-0 on April 30, 2008.
- Disciplinary Procedure Committee requested waiver of second reading at May 30, 2008 board meeting.

- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on May 6, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 7-0 on May 29, 2008.

Board Action: Waiver of second reading and rule amendment approved by Board of Governors on May 30, 2008.

Rule 4-7.5 Advertisements in the Electronic Media Other Than Computer-Accessed Communications (nonlawyer spokespersons)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (b), deletes the requirement, in instances where a nonlawyer spokesperson is used in television or radio advertisements, that an oral disclosure be given that the spokesperson is a spokesperson and is not a lawyer.

Reasons: The oral disclosure is overly burdensome to lawyers because most television advertisements are 10-60 seconds in length. Additionally, lawyers and public television and radio representatives have stated to The Florida Bar that FCC regulations prevent such a disclosure in public television and radio sponsorships and also prevent the lawyer from announcing the sponsorship. In instances where it is clear that the person speaking or appearing is a nonlawyer who is not a member of the firm, it is not misleading to consumers and an oral disclosure therefore seems superfluous. In situations where the spokesperson appears to be a lawyer, the rule prohibiting misleading information, including misleading omissions, would apply and the advertisement would be prohibited under the rule prohibiting misleading statements or omissions. Therefore, any need to protect the public can be met by use of another rule without burdening advertisements in which there is no deception of the public.

Source: Standing Committee on Advertising.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Advertising favorably reported by voice vote of 4-0 on November 26, 2007.

- Board Review Committee on Professional Ethics favorably reported substantive review by voice vote of 2-0 on January 31, 2008.

- Disciplinary Procedures Committee favorably reported substantive review by voice vote of 7-0 on February 28, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.
- Rules Committee favorably reported procedural review by voice vote of 4-0 on April 30, 2008; requested waiver of second reading at May 30, 2008 board meeting.
Board Action: Board of Governors approved waiver and proposed amendments on May 30, 2008.

Rule 4-7.5 Advertisements in the Electronic Media Other Than Computer-Accessed Communications (use of celebrities and sounds)

Explanation: This is second of two different proposals for amendment of this rule. In connection with separate proposed amendments to rule 4-7.2 and within subdivision (b)(1) re prohibited content in television or radio advertisements, deletes the prohibitions in (B) & (C) on the use of a celebrity and prohibited sounds, to be added to the general rule and made applicable to all media; revises other affected subdivision entries accordingly; within comment, deletes companion entry re the use of sounds, also to be added to rule 4-7.2.

Reasons: The recommended amendments move provisions from rule 4-7.5(b)(1) to new subdivisions (c)(15) and (c)(16) of rule 4-7.2, making rules that were previously applicable only to television and radio applicable to all media, in recognition that other media now have similar capabilities as television and radio and simplifying the rules so that they are more rules of general application. The proposals also change the prohibition against all background sound to a prohibition against only those sounds which are deceptive, misleading, manipulative, or likely to confuse the listener. This suggested change conforms the rule on background sound more closely to rule 4-7.2(c)(4) on prohibited verbal and visual portrayals and makes the rule no more restrictive than necessary to protect the public from information that is misleading. See Gary Blankenship, *Board backs court over “announcers” in lawyer radio and TV ads*, *The Florida Bar News*, November 1, 2007, at 22, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/F1B18020FFDC47A2852573800059268D>, materials from the Board Review Committee on Professional Ethics prepared for the December 14, 2007 meeting of the Board of Governors of The Florida Bar, and *Ad Committee seeks change to rule regarding spokespersons*, *The Florida Bar News*, December 15, 2007, at 3, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/83EA65D84174870A852573A9006B2803> (discussing these issues) in Appendix D at 69-79.

Source: Standing Committee on Advertising.

Source: Standing Committee on Advertising.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Advertising favorably reported by voice vote on September 7, 2007.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on October 4, 2007.
- Board Review Committee favorably reported substantive review by voice vote of 7-0 on November 5, 2007.
- On December 14, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on January 7, 2008.
- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.

Board Action: Board of Governors approved on February 1, 2008.

Rule 4-7.7 Evaluation of Advertisements

Explanation: Within subdivisions (a)(1)(B) and (b)(3) adds requirement that advertisement review filings also include a printed copy of any on-screen text; within subdivisions (a)(1)(A) & (a)(1)(C), adds 5 days' mailing time to the 15-day deadline for review of television and radio advertisements; within subdivisions (a)(1)(F) and (a)(2)(F) and the comment, clarifies that advertising opinions are binding on The Florida Bar in a grievance proceeding; also within comment, adds that Florida Bar members should obtain notice of compliance for television and radio advertisements before airing them; includes other non-substantive edits consistent with controlling editorial protocols.

Reasons: Subdivisions (a)(1)(B) and (b)(3) of rule 4-7.7 currently require that a transcript be included with a television or radio advertising filing and that a printed copy of all text used in any advertisement be included with the submission filed with The Florida Bar. These proposed amendments clarify that the transcript and printed copy include on-screen text, so that all information will be provided to The Florida Bar in printed form, to more efficiently and quickly review advertisements. Amendments to subdivisions (a)(1)(A) & (a)(1)(C), adds 5 days' mailing time to the 15-day deadline for review of television and radio advertisements in recognition of the new pre-filing requirement as adopted by the court in *In Re Amendments to the Rules Regulating The Florida Bar - Advertising*, 971 So. 2d 763 (Fla. 2007). This

suggested addition is intended to ensure that filers receive an opinion from The Florida Bar before their television and radio advertisements are disseminated, to avoid non-complying advertisements reaching the public. Other recommended amendments conform the rule to court style requirements and make the terminology in the rule, particularly regarding the binding nature of Florida Bar findings of compliance, more internally consistent.

Source: Standing Committee on Advertising.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Advertising favorably reported by voice vote on June 29, 2007.

- Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on October 4, 2007.

- Board Review Committee: favorably reported substantive review by voice vote of 7-0 on November 5, 2007 with exception of proposed changes to rule 4-7.7(a)(1)(A) and (C); referred back to staff for redrafting; favorably reported additional edits by voice vote of 6-0 on December 7, 2007.

- On December 14, 2007 board meeting agenda for first reading.

- Budget Committee favorably reported fiscal review by 7-0 fax/e-mail ballot on January 28, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 31, 2008.

Board Action: Board of Governors approved on February 1, 2008.

Rule 4-7.10 Lawyer Referral Services (responsibility)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivision (a) and commentary, clarifies that it is a violation of the Rules Regulating The Florida Bar for a member of the bar to accept referrals from a private, for-profit lawyer referral service that does not comply with the requirements of rule 4-7.10; within subdivision (b) re a lawyer's responsibility to ensure that a lawyer referral service from which the lawyer accepts referrals is in compliance with the Rules Regulating The Florida Bar, adds that it shall be a violation of such rules if the lawyer knows or should have known any referral service is not in compliance with applicable rules or if the lawyer failed to seek such information to determine compliance.

Reasons: These suggested amendments are meant to underscore that violations of subchapter 4-7 have disciplinary implications, to include issues of a lawyer's knowledge of an affiliated lawyer referral service's failure to comply with

applicable bar rules or the lawyer's failure to seek information in order to determine such compliance by a lawyer referral service.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 8-0 on January 25, 2007.
- On March 30, 2007 Board of Governors meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax / e-mail ballot of 5-1 on May 11, 2007.
- Disciplinary Procedure Committee reviewed comments from the Rules Committee and reaffirmed its prior approval of the amendments by a voice vote of 6-0 on May 31, 2007.

Board Action: Board of Governors approved on June 1, 2007.

Rule 4-7.10 Lawyer Referral Services (Definition of Lawyer Referral Service)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (c), revises the definition of a lawyer referral service to clarify that the referral of clients to a selected lawyer for any consideration constitutes a referral service.

Reasons: These proposed revisions expand the definition of a lawyer referral service to include relationships where a lawyer affiliated with a lawyer referral service may be accepting non-monetary consideration in exchange for referrals, which the proscriptions of this rule should also clearly encompass.

Source: Statewide Advertising Grievance Committee and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on January 18, 2008.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.
- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.
- On March 28, 2008 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Subchapter 4-8 Maintaining the Integrity of the Profession

Rule 4-8.4 Misconduct; (failure to respond)

Explanation: This is first of two different proposals for amendment of this rule. In connection with separate proposed amendments to rule 3-7.11(f), within subdivision (g), specifies that failure to respond to an official bar inquiry without good cause shown may be a matter of contempt.

Reasons: Clarifies that failure to respond to an official bar inquiry with no good cause shown is misconduct and may be a matter of contempt, processed summarily under supreme court procedures. Current rules require a member's response to all official bar inquiries. Under those rules, a failure to respond must be processed through the grievance committee, referee, and appellate processes before the transgression may ever be addressed. In appropriate cases, a summary process should be available to deal with instances where a respondent has improperly failed to respond and thereby delayed a just resolution of a disciplinary matter.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed on August 31, 2007; Disciplinary Procedure Committee directed staff to draft an expedited process for dealing with this type of contempt on January 18, 2008; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on January 31, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on March 17, 2008.

- Program Evaluation Committee favorably reported strategic plan review unanimously on March 19, 2008.

- On March 28, 2008 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by vote of 4-0 on April 30, 2008 conference call.

Board Action: Board of Governors approved on May 30, 2008.

Rule 4-8.4 Misconduct (sex with client)

Explanation: This is second of two different proposals for amendment of this rule. Within subdivision (i) and commentary, substantially revises existing restrictions on sexual conduct between attorney and client or client's representative, to state that any such conduct which commences after the attorney/client relationship started creates a presumption – rebuttable by the lawyer by a preponderance of the evidence – that it exploits or adversely affects the client's interests or attorney-client relations.

Reasons: This proposed change is in response to the court's opinion in *The Florida Bar v. Bryant*, 813 So.2d 38 (Fla. 2002), where one justice wrote separately "to urge The Florida Bar to revisit rule 4-8.4(i) and to consider a rule that prohibits all sexual relationships between lawyers and their clients during the attorney-client relationship." 813 So.2d at 44 (Pariente, concurring). The proffered revision is meant to accommodate those who may favor a complete ban on such relationships and others who object to a total prohibition due to what may be understandable real-life situations that could be dealt with through separate protective measures. It was argued, for example, that lawyers in a firm should be able to date sophisticated business clients of the firm if the lawyer involved was not directly working on the client's case – to address that scenario, a new second paragraph of the rule is proposed. Also, there were objections to a total ban from attorneys who reported that they were already in sexual relationships with individuals before they became their clients. In those situations, the general conflict rule already prohibits a lawyer from representing a client if the lawyer cannot maintain independent professional judgment in the representation, for any reason. Considering all those issues, the proposed revisions create a presumption of impropriety in most cases, with the one recognized exception noted above.

Source: Court recommendation and Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed on July 10 and July 27, 2006; *see* extract of materials from July 27, 2006 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 88-91; Bar leadership addressed Disciplinary Procedure Committee in support of clarification of the rule on August 25, 2006, and staff was directed to make edits; *see* extract of agenda materials for and minutes from August 25, 2006 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 92-102; the redrafted amendment from the previous meeting was presented to Disciplinary Procedure Committee for discussion on November 1, 2006; *see* extract of agenda materials for November 1, 2006 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 103-104; after extensive debate Disciplinary Procedure Committee voted 4-3 to approve a redrafted proposed amendment; *see* extract of materials from November 1, 2006 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 105-109.

- Rules Committee favorably reported by vote of 4-2 by fax/e-mail ballot on November 28, 2006.
 - On December 8, 2006 board meeting agenda for first reading; *see* December 6, 2006 memorandum from 2006-07 Florida Association for Women Lawyers President Wendy Loquasto to the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 110.
 - Disciplinary Procedure Committee voted 7-0 on January 25, 2007 to recommend amendment to the rule changing the proposed burden of proof for rebutting the presumption to a preponderance of the evidence and adding language clarifying that if one lawyer and a firm provide legal services to a client and another lawyer in the same firm has a sexual relationship with a client, the rule does not apply to the lawyer having a sexual relationship with the client as long as that lawyer does not have any involvement in rendition of the legal services, and clarifying language to the comment about such conduct having the capacity to impair the exercise of independent judgment by the lawyer; *see* extract of materials from January 25, 2007 meeting of the Disciplinary Procedure Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 111-116.
 - On January 26, 2007 board meeting agenda for first reading; *see* Gary Blankenship, *Bar looks at stricter rule on sex with clients*, *The Florida Bar News*, February 15, 2007, at 14, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/65232023F609FB7E8525727D0057CD8F>, in Appendix D at 117-118.
 - Disciplinary Procedure Committee referred back to Rules Committee in its amended form for review and consideration.
 - Rules Committee favorably reported procedural review by e-mail/fax ballot of 7-0 on March 8, 2007.
- Board Action:* Board of Governors approved on March 30, 2007. *See* Gary Blankenship, *Revamped sex with clients rule forwarded to the court*, *The Florida Bar News*, April 15, 2007, at 14, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/3C1FA81783203129852572B9007433FD>, in Appendix D at 119-120.

Chapter 5 Rules Regulating Trust Accounts

Subchapter 5-1 Generally

Rule 5-1.1 Trust Accounts (Interest on Trust Accounts - IOTA Program)

Explanation: This is first of two different proposals for amendment of this rule. Within subdivisions (g)(1)(A) & (g)(2), clarifies definition and IOTA participation requirements regarding the practicable investment of nominal or short term funds, to specify funds the lawyer has determined cannot "earn income for the client or third person in excess of the costs to secure the income."

Reasons: With support of The Florida Bar Foundation, this amendment is proposed in response to national litigation concerning definitional standards for short-term or nominal IOTA trust funds; *see Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2008). In that case, certain language was vetted by the federal courts. This proposed amendment adopts that wording to ensure the vitality of Florida's IOTA program.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee considered and made additional edits on January 31, 2008; Disciplinary Procedure Committee conditionally approved the amendment upon acceptance of additional edits by The Florida Bar Foundation; The Florida Bar Foundation asked the Disciplinary Procedure Committee to reconsider the original proposal which also included regular lawyer review of IOTA trust deposits for changed circumstances; Disciplinary Procedure Committee favorably reported the original language presented on behalf of the foundation, by voice vote of 7-0, on February 28, 2008.

- On March 28, 2008 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by voice vote of 4-0 on April 30, 2008.

- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on May 6, 2008.

- Program Evaluation Committee favorably reported strategic plan review by 7-0 voice vote on May 29, 2008.

Board Action: Board of Governors approved on May 30, 2008.

Rule 5-1.1 Trust Accounts (Overdraft Protection Prohibited)

Explanation: This is second of two different proposals for amendment of this rule. Adds new subdivision (k) to prohibit an attorney from authorizing overdraft protection for any account that contains trust funds.

Reasons: Any funds that an attorney might use to satisfy an overdraft in an account that contains trust funds would come from funds of the lawyer or the law

firm, and would then be co-mingled with trust funds or property. Such a practice should be disallowed.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed and reviewed draft prepared by staff on January 3, 2007; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 7-0 on January 25, 2007; *see Overdraft protection for trust accounts?*, The Florida Bar News, March 1, 2007, at 1, available at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/F989056432ACDC1E8525728B00514066> in Appendix D at 121-122.

- On March 30, 2007 Board of Governors meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax / e-mail ballot of 6-0 on May 11, 2007.

Board Action: Board of Governors approved on June 1, 2007.

Rule 5-1.2 Trust Accounting Records and Procedures (Minimum Trust Accounting Records)

Explanation: This is first of four different proposals for amendment of this rule. Within subdivision (b) re minimum trust account records, deletes the requirement that original canceled checks be maintained, and substitutes a legible copy requirement provided that such copies include all data contained in the original.

Reasons: This proposed amendment recognizes the reality that many financial institutions no longer, in the ordinary course of business, return original canceled trust checks to lawyers. Frequently, digital copies are substituted or made available to lawyers upon request. As long as some complete form of documentation is maintained by an attorney, a compliance audit can be conducted when appropriate and the needs of the bar would be satisfied.

Source: Disciplinary Procedure Committee, based on member commentary; *see* August 7, 2007 correspondence from member Steven Lenoff to The Florida Bar (discussing this issue) in Appendix D at 123.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by vote of 8-0 on August 31, 2007.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.
- On October 5, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by voice and ballot vote of 6-0 on November 14, 2007.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Rule 5-1.2 Trust Accounting Records and Procedures (Minimum Trust Accounting Procedures)

Explanation: This is second of four different proposals for amendment of this rule. Within subdivision (c), adds clarifying edits to confirm that a lawyer or law firm's authorization that a bank or savings and loan association notify The Florida Bar of various trust account irregularities shall occur "at the time the account is opened," and that such account irregularities include overdrawing an account or dishonoring a trust check.

Reasons: This recommended amendment is considered necessary to make clearer to both banks and attorneys their duties in reporting trust account overdrafts. In the past, some banks protected attorneys who were long-time customers by not immediately reporting trust account overdrafts to the bar and, instead, notifying the attorneys first to let them cover the shortfall. Some banks also apparently thought this was a non-reportable event or did not report it until long after the fact. Additionally, attorneys who staff the bar's Ethics Hotline note that some lawyers do not understand their obligation to provide their bank with instructions regarding the reporting of overdrafts when they first open a trust account. The proposed revisions should eliminate some of this confusion.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by vote of 9-0 on May 10, 2006.
- On June 2, 2006 board meeting agenda for first reading.
- Board of Governors conceptually approved on June 2, 2006.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Rule 5-1.2 Trust Accounting Records and Procedures (Audits)

Explanation: This is third of four different proposals for amendment of this rule. Within subdivision (e), adds disbarment as an additional cause to order an audit of a trust account.

Reasons: As also noted with regard to proposed amendments to rule 3-7.11(i), the discontinuance of the option of a “disciplinary resignation” – replaced by “disbarment on consent” – effectively ended judicial sanction of the bar practice, in disciplinary cases involving trust account irregularities, of auditing the trust and other financial accounts of respondents after the effective date of their disciplinary resignations. *See, In Re Amendment to the Rules Regulating The Florida Bar*, 978 So. 2d 91 (Fla. 2007). In order to confirm the continuation of this practice, this proposed amendment is considered necessary.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on April 6, 2006 – prior rule language was discussed. The purposes of the rule authorizing post-resignation audits were acknowledged to be protection of the public, assistance to prosecutorial authorities by referral of detailed information, and assistance to the Clients’ Security Fund by identifying possible alternative sources of recovery of funds. Disciplinary Procedure Committee heard a suggestion from staff that any change should preserve the viability of disbarment on consent and that loading up same with additional requirements would likely result in fewer agreements for disbarment. After debate the Disciplinary Procedure Committee agreed that staff should draft an amendment providing for post-resignation authority independent of agreements for disbarment and to draft a policy for consideration until such time as the rule amendment is implemented.

- Disciplinary Procedure Committee favorably reported substantive review by vote of 10-0 on May 10, 2006.

- On June 2, 2006 board meeting agenda for first reading.

- Board of Governors conceptually approved on June 2, 2006.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Rule 5-1.2 Trust Accounting Records and Procedures (Failure to Comply with Subpoena for Trust Accounting Records)

Explanation: This is fourth of four different proposals for amendment of this rule. In connection with separate proposed amendments to rule 3-7.11, within

subdivision (g), deletes existing language and adds provision clarifying that a failure to comply with a subpoena for trust account records shall be considered as a matter of contempt, processed pursuant to rule 3-7.11(d) & (f).

Reasons: Current rules – rule 3-7.11 and rule 5-1.2 – create two separate processes for administering cases of contempt by respondents. This suggested amendment and the companion revisions to rules 3-7.11(d) & (f) remove the process within rule 5-1.2 and incorporate it as necessary into that still provided for in rule 3-7.11. Confusion created by the two existing rules should be eliminated.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0, with minor language and editorial changes, on May 31, 2007.
- On August 17, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 6-0 on September 18, 2007 conference call.
- Budget Committee favorably reported fiscal review by voice vote of 7-0 on October 4, 2007.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

Board Action: Board of Governors approved on October 5, 2007.

Chapter 6 Legal Specialization and Education

Subchapter 6-3 Florida Certification Plan

Rule 6-3.5 Standards for Certification

Explanation: Within subdivision (c)(4), adds new language that would require certification examinations to include ethics and professional responsibility components; includes other non-substantive edits.

Reasons: Testing certification applicants on ethical and professionalism issues is an additional safeguard to ensure successful examinees exhibit the high ethical and professional standards required of a board certified lawyer.

Source: Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education favorably reported by vote of 10-0 on May 24, 2007.
- Program Evaluation Committee favorably reported substantive and strategic plan review by voice vote of 6-0 on October 4, 2007.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.
 - On December 14, 2007 board meeting agenda for first reading.
 - Rules Committee favorably reported procedural review by fax/e-mail vote of 4-0 on January 7, 2008.
- Board Action:* Board of Governors approved on February 1, 2008.

Rule 6-3.9 Manner of Certification

Explanation: Within subdivision (a), adds an option for certified lawyers to use the initials “B.C.S.” to indicate they are board certified specialists in an abbreviated manner; further specifies appropriate contexts for the use of such initials.

Reasons: To provide board certified lawyers another means by which to communicate their certification status, and to be recognized as such.

Source: Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education favorably reported by vote of 11-0 on November 4, 2005.
- Withdrawn per decision of Board of Legal Specialization and Education Executive Committee by vote of 5-0 on December 1, 2005; amendment was discussed by Board of Legal Specialization and Education on January 20, 2006 and staff was directed to redraft the amendment; a redraft was prepared and shared with Ethics Counsel, on February 24, 2006.
- On March 7, 2006 the Standing Committee on Advertising met and considered the new language; Standing Committee on Advertising had no objection to the proposal.
- Board of Legal Specialization and Education favorably reported the revised version by vote of 12-0 on March 17, 2006.
- Program Evaluation Committee favorably reported substantive review by unanimous vote on April 6, 2006.
- On April 7, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/email vote of 7-0 on May 12, 2006.

Board Action: Board of Governors approved on June 2, 2006.

Subchapter 6-10 Continuing Legal Education Requirement Rule

Rule 6-10.3 Minimum Continuing Legal Education Standards

Explanation: Within subdivision (b), adds "bias elimination" to the list of approved CLE topics; within subdivision (e), clarifies that approved courses of other state bars must still meet criteria for accreditation per policies under this rule; includes other non-substantive edits consistent with controlling editorial protocols.

Reasons: This proposal is consistent with the American Bar Association's model rule for minimum continuing legal education and a February 2004 ABA recommendation that state bars require courses on the elimination of bias in the profession as part of the CLE obligation for attorneys. *See* March 16, 2006 memorandum from Allison Bethel to the Executive Council of the Equal Opportunities Law Section of The Florida Bar (discussing this issue) in Appendix D at 124-125.

Source: Equal Opportunities Law Section and Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Equal Opportunities Law Section members approved on March 31, 2006.
- Board of Legal Specialization and Education favorably reported by vote of 13-0 on June 23, 2006.
- Program Evaluation Committee favorably reported substantive review by unanimous vote on July 27, 2006 after minor edit.
- Rules Committee discussed further clarifying edits suggested by a board member and accepted by the Board of Legal Specialization and Education staff liaison; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on August 29, 2006 conference call; after clarification from court personnel re certain purely stylistic edits in question, those items were withdrawn; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Rule 6-10.4 Reporting Requirements

Explanation: Within subdivision (b), changes verbiage regarding the assignment of CLE reporting cycles, from "as set forth in the rules and regulations" to "as assigned by The Florida Bar".

Reasons: Proposed amendments more accurately describe the process of assigning reporting cycles.

Source: Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education favorably reported by vote of 13-0 on June 23, 2006.
- Program Evaluation Committee unanimously approved substantive review on July 27, 2006.
- Rules Committee discussed further clarifying edits suggested by a board member and accepted by the Board of Legal Specialization and Education staff liaison; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on August 29, 2006 conference call; after clarification from court personnel re certain purely stylistic edits in question, those items were withdrawn; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On September 29, 2006 board meeting agenda for first reading.
Board Action: Board of Governors approved on December 8, 2005.

Rule 6-10.5 Delinquency and Appeal

Explanation: Within subdivision (c), clarifies that an appeal of a delinquency based on failure to complete the continuing legal education requirement must be by petition for review to the Supreme Court in accordance with Fla.R.App.P. 9.100.

Reasons: Editorial amendment, to specifically reference the process of review by this court.

Source: Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education favorably reported by vote of 13-0 on June 23, 2006.
- Program Evaluation Committee favorably reported substantive review by unanimous vote on July 27, 2006.
- Rules Committee discussed further clarifying edits suggested by a board member and accepted by the Board of Legal Specialization and Education staff liaison; Rules Committee favorably reported with additional edits by voice vote of 6-0 on August 29, 2006 conference call; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On September 29, 2006 board meeting agenda for first reading.
Board Action: Board of Governors approved on December 8, 2006.

Rule 6-10.6 Reinstatement

Explanation: Streamlines verbiage and adds specific reference to rule 1-3.7 which governs reinstatement to membership.

Reasons: Editorial and clarifying amendment, to link language to the general reinstatement provisions within rule 1-3.7.

Source: Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education favorably reported by vote of 13-0 on June 23, 2006;
- Program Evaluation Committee favorably reported substantive review by unanimous vote on July 27, 2006.
- Rules Committee discussed further clarifying edits suggested by the chair and accepted by the Board of Legal Specialization and Education staff liaison; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on August 29, 2006 conference call; Rules Committee reaffirmed approval of the revised amendments by fax/email vote of 6-0 on September 5, 2006.
- On September 29, 2006 board meeting agenda for first reading.

Board Action: Board of Governors approved on December 8, 2006.

Chapter 10 Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law

Subchapter 10-6 Procedures for Investigation

Rule 10-6.3 Recommendations and Disposition of Complaints

Explanation: Within subdivision (c), changes the order of sentences for clarity, and further defines the role of the board of governors regarding litigation.

Reasons: As currently written, the order of the sentences in this rule has led to some confusion. This editorial amendment seeks to remedy that concern and also clarifies the role of the board of governors with regard to final determinations relating to UPL litigation.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Proposed and favorably reported by Standing Committee on Unlicensed Practice of Law by vote of 22-0 on September 6, 2007.
- Disciplinary Procedure Committee favorably reported substantive review by vote of 6-0 on October 4, 2007.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.
- On October 5, 2007 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by voice and ballot vote of 6-0 on November 14, 2007.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Subchapter 10-7 Proceedings Before a Referee

Rule 10-7.1 Proceedings for Injunctive Relief (Options A and B)

Explanation: Two proposals are under consideration, each containing an identical amendment to subdivision (e) within, summarized separately.

These amendments – offered as two separate options, *A* or *B* – are proposed to address various concerns expressed by the court regarding the collection of monetary penalties as now authorized in unlicensed practice of law cases. *See* January 9, 2007 and January 10, 2007 correspondence from Thomas D. Hall, Clerk of the Supreme Court of Florida, to John F. Harkness, Executive Director of The Florida Bar, and September 8, 2008 Florida Bar staff memorandum from Lori Holcomb, Unlicensed Practice of Law counsel, to Paul Hill, General Counsel, (discussing this issue) in Appendix D at 126-131.

Included within both options is an identical proposal, creating a new subdivision (e) – “Record” – which defines the record, its contents, preparation and filing thereof, supplementation or removal of record contents, and otherwise clarifies these various administrative issues in UPL cases consistent with analogous rules relating to attorney disciplinary matters, *e.g.* rule 3-7.6(n).

Option A

Summary: Within subdivision (d)(1), deletes provisions re imposition of a civil penalty not to exceed \$1000 per incident of unlicensed practice of law; adds within (d)(2), as an allowable cost, a litigation expense in an amount up to \$1000 per incident, to encompass litigation costs not otherwise specified; revises other affected subdivision entries as necessary; within (d)(3) adds a provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; within subdivision (e)(2), deletes provision that court orders of restitution contain a requirement that the respondent provide to the bar monthly reports of payment to the complainant, instead adding a new requirement that such orders specify that payment be sent to the bar, payable to the complainant, and forwarded by the bar to the complainant; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the bar.

Option B

Summary: Within subdivision (c)(2), adds new requirement that, if civil penalties are requested, the referee's order of a case management conference shall include notice to respondent re respondent's burden to show an inability to pay such penalty; within subdivision (d)(3), deletes provision that states restitution shall be paid before costs, and adds provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; creates new (d)(4) – civil penalty – requiring the referee's determination and report of the respondent's ability or inability to pay such penalty in unstipulated cases, confirming the respondent's burden to show inability via sworn affidavit, and specifying the application of statutory indigency criteria in the process; revises other affected subdivision entries as necessary; adds new (d)(6) – timing of payment – specifying that the order of payment in such cases is restitution, then costs, and then civil penalty; and within subdivision (e)(2) re Supreme Court review, adds new provisions specifying the court's determination of whether civil penalties shall be awarded, that orders imposing restitution or civil penalties require their transmittal to the bar – with restitution payable to the complainant and civil penalties payable to the court – for forwarding by the bar to those respective payees; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the bar.

Reasons: These amendments are proposed to address various concerns expressed by the court regarding the collection of monetary penalties as currently authorized in unlicensed practice of law cases.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported on June 29, 2007 – 18 members preferred *Option A* and 5 members preferred *Option B*; Standing Committee on Unlicensed Practice of Law unanimously voted to present both options to the court.

- Disciplinary Procedure Committee, on August 31, 2007, favorably reported both options for board review by vote of 6-1 and favorably reported adding a new rule 10-7.3 if *Option B* is chosen as the preferred language.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

- On October 5, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by voice and ballot vote of 6-0 on November 14, 2007.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Rule 10-7.1 Proceedings for Injunctive Relief (Record)

Explanation: As noted *supra*, this proposed amendment – identical to one recommended within rule 10-7.2 – is contained within both *Option A* and *Option B* which would further revise rule 10-7.1 to address various concerns expressed by the court regarding the collection of monetary penalties as now authorized in unlicensed practice of law cases. This separate proposal would add new subdivision (e) to define the record in such proceedings; clarifies the roles of referee and bar counsel in preparation and filing of the record; and provides a mechanism for review of a referee’s denial of a motion to supplement or remove items from the record; revises other subdivision entries as necessary.

Reasons: Clarifies these various administrative issues in UPL cases consistent with analogous rules relating to attorney disciplinary matters, *e.g.* rule 3-7.6(n). *See* August 7, 2006 Florida Bar staff memorandum from Jeffrey T. Picker, Assistant Director, Unlicensed Practice of Law, as staff liaison to the Standing Committee on Unlicensed Practice of Law of The Florida Bar (discussing this issue) in Appendix D at 132.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.
- On September 29, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 10-7.2 Proceedings for Indirect Criminal Contempt

Explanation: Consistent with identical amendments proposed for rule 10-7.1, adds new subdivision (d) to define the record in such proceedings; clarifies the roles of referee and bar counsel in preparation and filing of the record; and provides a

mechanism for review of a referee's denial of a motion to supplement or remove items from the record; revises other subdivision entries as necessary.

Reasons: Clarifies these various administrative issues in unlicensed practice of law cases consistent with analogous rules relating to attorney disciplinary matters, e.g. rule 3-7.6(n). See August 7, 2006 Florida Bar staff memorandum from Jeffrey T. Picker, Assistant Director, Unlicensed Practice of Law, as staff liaison to the Standing Committee on Unlicensed Practice of Law of The Florida Bar (discussing this issue) in Appendix D at 132.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.
- On September 29, 2006 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 10-7.3 Enforcement of Award of Civil Penalty

Explanation: New rule – necessary only if this court adopts the proposed amendments to rule 10-7.1 within *Option B* – authorizing The Florida Bar to conduct discovery in aid of execution if a respondent fails to timely pay a civil penalty; allows dissolution of the penalty by the court on motion of the bar stating that the respondent is unable to pay; if discovery shows otherwise, allows the penalty to stand and authorizes the bar to file a petition for indirect criminal contempt.

Reasons: These amendments are proffered to address various concerns expressed by the court regarding the collection of monetary penalties as currently authorized in unlicensed practice of law cases. Again, these revisions are only necessary if the court adopts the proposed amendments to rule 10-7.1 contained in *Option B*.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported on June 29, 2007 – 18 members preferred *Option A* and 5 members preferred *Option B*; Standing Committee on Unlicensed Practice of Law unanimously voted to present both options to the court.

- Disciplinary Procedure Committee, on August 31, 2007, favorably reported both options for board review by vote of 6-1 and favorably reported adding a new rule 10-7.3 if *Option B* is chosen as the preferred language.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on October 4, 2007.

- On October 5, 2007 board meeting agenda for first reading.

- Rules Committee favorably reported by voice and ballot vote of 6-0 on November 14, 2007.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on December 3, 2007.

Board Action: Board of Governors approved on December 14, 2007.

Chapter 14 Grievance Mediation and Fee Arbitration

Subchapter 14-4 Institution of Proceedings

Rule 14-4.1 Arbitration Proceedings

Explanation: Within subdivisions (a) & (b) revises text for clarity; adds new subdivisions (c) – (e) authorizing referrals by intake counsel or bar counsel, grievance committees, and the board of governors, to conform fee arbitration procedures with those applicable to grievance mediation.

Reasons: These essentially editorial amendments are proposed to ensure consistency in the administration of the grievance mediation and fee arbitration programs by adding referral provisions within new subdivisions (c)-(e) that mirror those in rule 14-4.2 regarding grievance mediation proceedings.

Source: Disciplinary Procedure Committee.

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on March 15, April 6, and May 10, 2006; Disciplinary Procedure Committee favorably reported substantive review by vote of 10-0 on May 10, 2006.

- On June 2, 2006 board meeting agenda for first reading.

- Board of Governors conceptually approved on June 2, 2006.

- Rules Committee discussed further clarifying edits suggested by two committee members and accepted by Disciplinary Procedure Committee staff liaison; Rules Committee favorably reported procedural review with additional edits by voice vote of 6-0 on July 11, 2006 conference call.

Board Action: Board of Governors approved on July 28, 2006.

Chapter 17 Authorized House Counsel Rule

Subchapter 17-1 Generally

Rule 17-1.2 Definitions

Explanation: Within subdivision (a), moves non-definitional terms to other appropriate rules; adds definition of “authorized house counsel” as someone who has been certified as such by the Supreme Court of Florida.

Reasons: Editorial amendment. As currently written, this definitional rule contains portions that are not definitional. Those inconsistent passages are removed and placed in other rules where appropriate, and the definition for authorized house counsel is refined to include a person so certified by the Supreme Court of Florida.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by vote of 26-0 on June 23, 2006. See August 2, 2006 Florida Bar staff memorandum from Lori S. Holcomb, Unlicensed Practice of Law Counsel, to the Disciplinary Procedure Committee and the Rules Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 133-135.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.

- On September 29, 2006 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

- Program Evaluation Committee favorably reported by voice vote of 10-0 on December 7, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 17-1.4 Registration

Explanation: Within subdivision (a), allows inactive members to provide certification of inactive status in lieu of a certificate of good standing; clarifies that an authorized house counsel must be familiar with chapters 4 and 17 of the Rules Regulating The Florida Bar; also includes language removed from rule 17-1.2, requiring registrants to provide certified statement that they have not been permanently denied admission to practice due to character and fitness; within subdivision (b), deletes unnecessary language citing examples of grounds for returning applications; adds new subdivision (e) – Duty to Update – re certified authorized house counsels' continuing need to advise The Florida Bar regarding their inactive status in any other jurisdiction.

Reasons: The rule requires that an applicant for authorized house counsel status be in good standing in all states where the applicant is licensed to practice law. Some states do not provide certificates of good standing to inactive members. Applicants who are licensed in those states would have to relinquish their license or reactivate their status in order to become certified as an authorized house counsel. This proposed amendment allows individuals who are voluntarily on inactive status in other states to apply for authorized house counsel status without a certificate of good standing. Another proposed change would impose a duty on authorized house counsel to update The Florida Bar regarding their membership status in other jurisdictions should an authorized house counsel choose inactive status after certification.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by vote of 26-0 on June 23, 2006. See August 2, 2006 Florida Bar staff memorandum from Lori S. Holcomb, Unlicensed Practice of Law Counsel, to the Disciplinary Procedure Committee and the Rules Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 133-135.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.

- On September 29, 2006 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

- Program Evaluation Committee favorably reported by voice vote of 10-0 on December 7, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 17-1.5 Termination or Withdrawal of Registration

Explanation: Within subdivision (a), adds involuntary placement on inactive status as another ground for termination of authorized house counsel status; within subdivision (b), clarifies procedure for notifying individuals and business employers of any termination of status.

Reasons: In connection with separate proposed amendments to rule 17-1.4 which would allow an attorney who is voluntarily on inactive status to apply for authorized house counsel status without supplying a certificate of good standing,

this suggested change adds involuntary placement on inactive status as grounds for termination of authorized house counsel status.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by vote of 26-0 on June 23, 2006. *See* August 2, 2006 Florida Bar staff memorandum from Lori S. Holcomb, Unlicensed Practice of Law Counsel, to the Disciplinary Procedure Committee and the Rules Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 133-135.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.

- On September 29, 2006 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

- Program Evaluation Committee favorably reported by voice vote of 10-0 on December 7, 2006.

Board Action: Board of Governors approved on December 8, 2006.

Rule 17-1.9 Continuing Legal Education Requirement

Explanation: In connection with separate proposed amendments to rule 17-1.2, this suggested new rule specifies the CLE requirements for authorized house counsel removed from rule 17-1.2's definitional provisions.

Reasons: For clarity, this proposal would place the non-definitional continuing legal education requirements for authorized house counsel, now in rule 17-1.2, in a new rule.

Source: Standing Committee on Unlicensed Practice of Law.

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by vote of 26-0 on June 23, 2006. *See* August 2, 2006 Florida Bar staff memorandum from Lori S. Holcomb, Unlicensed Practice of Law Counsel, to the Disciplinary Procedure Committee and the Rules Committee of the Board of Governors of The Florida Bar (discussing this issue) in Appendix D at 133-135.

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 5-0 on August 25, 2006.

- On September 29, 2006 board meeting agenda for first reading.

- Rules Committee favorably reported procedural review by fax/e-mail vote of 5-0 on November 6, 2006; Rules Committee reaffirmed by voice vote during conference call on November 6, 2006.

- Program Evaluation Committee favorably reported by voice vote of 10-0 on December 7, 2006.

Board Action: Board of Governors approved on December 8, 2006.

IV

5. Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals herein was published in the September 1, 2008 issue of The Florida Bar *News*, with the exception of three minor editorial adjustments noted in section V, *infra*. A photocopy of that published notice, printed from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice can also be found at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/0955FE8C6D2ADCDC852574B100494AD0>. As mentioned within that notice, it was intended to

correct, update, and supersede two prior notices that were published in the August 1, 2008 and August 15, 2008 issues of The Florida Bar *News*.

V

6. During the preparation of this petition, the bar detected minor editorial errors within two proposals as officially noticed.

- **R. Regulating Fla. Bar 4-7.4(b)(1):** This provision prohibits various unsolicited written communications, itemized within subdivisions (A) through (F). The proposed addition of another prohibition, as new subdivision (G), should have included the deletion of the “or” at the end of subdivision (E) and re-insertion of that word at the end of subdivision (F), because it would be the new penultimate entry in that listing.

- **R. Regulating Fla. Bar 10-7.3:** The presentation of this proposal, in legislative format, within the official notice failed to include underlining of the title for this recommended new rule.

7. Also, during the preparation of this petition, the bar detected one editorial flaw within the existing text of a rule which is the object of other proposed amendments herein.

• **R. Regulating Fla. Bar 4-1.8:** In its current state, the form certificate confirming that a lawyer has provided the Statement of Insured Client's Rights to any insured client lacks a blank line in the closing portion of the address field within the layout for that certification.

8. These items were not formally acted upon by the board of governors but are now presented correctly herein.

9. The Florida Bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal in effect and of no substance. The bar therefore requests that these three additionally revised proposals be accepted by the court, and that any necessary waiver pursuant to R. Regulating Fla. Bar 1-12.1(i) be granted so that these items might travel with the other proposals herein.

10. All other requested amendments herein were promulgated in full compliance with applicable rules and policies which, as of September 17, 2007, reflect additional required review by both the Program Evaluation Committee and the Budget Committee of the Board of Governors of The Florida Bar, respectively, for consistency with the bar's strategic plan and for fiscal impact.

VI

11. As noted *infra*, in section I, two other filings approved by the board of governors and seeking separate amendments to the Rules Regulating The Florida Bar have already been tendered to this court: (a) one matter has already been determined – *In re: Amendments to the Rules Regulating The Florida Bar and the Florida Rules of Judicial Administration – Multijurisdictional Practice of Law*, No. SC07-1844 (Fla. Sept. 11, 2008); and (b) another case, still pending – *In re: Amendments to the Rules Regulating The Florida Bar – Rule 4-7.6, Computer Accessed Communication*, No. SC 08-1181 (petition filed Feb. 26, 2008).

12. And, as additionally discussed *infra*, in section I and further noticed in

the September 15, 2008 issue of *The Florida Bar News*, a separate filing is intended after submission of this petition, seeking approval of newly proposed certification programs in two areas of practice.

13. The proposed amendments within the instant filing are unrelated to these three different rules matters and may be considered independent of them.

VII

14. The complete text of all proposals herein is included in Appendix A to this petition, presented in legislative format (*i.e.*, deleted language struck through, shown first, followed by new language underlined).

15. A separate two-column presentation follows within Appendix B, which includes extracted text of affected rules, proposed amendments thereto, and an abbreviated recitation of the reasons for such changes, which are more fully expressed in this petition.

16. As discussed *infra*, in paragraph 5, the notice of intent to file this petition is included in Appendix C.

17. Appendix D includes various communications of note that were sent or received during the rules development process, and which are specifically referenced herein where considered pertinent to proposed amendments.

18. Appendix E includes any communications of note that were received after official publication of the proposed amendments in connection with the published notice of intent to file this petition.

VIII

19. Since the official notice of intent to file this petition, only one proposal – regarding the nomenclature of various legal fees within the text of R. Regulating Fla. Bar 4-1.5 and its comment – has drawn any public reaction. Identical letters from two different lawyers were received, describing a fee arrangement they each utilize, which they each thought was not addressed in these proposed amendments. The bar’s ethics counsel sent an identical response to each commentator, suggesting

that a change in the lawyers' characterization of such fee arrangements, consistent with the suggested amendments herein, should address their concerns. *See* August 21, 2008 correspondence from Larry E. Ciesla and August 22, 2008 correspondence from Jack M. Ross to The Florida Bar, and September 5, 2008 and September 8, 2008 reply from Florida Bar Ethics Counsel Elizabeth Clark Tarbert, respectively, to Ciesla and Ross (discussing these issues) in Appendix E at 2-7.

20. No other proposed amendment within this petition as noticed has generated any sentiment that has been communicated to The Florida Bar. However, in anticipation that additional comments may be tendered in response to this filing, the bar requests leave to file one consolidated reply to all such commentary, no later than 20 days after the 30-day period for comment in response to this petition has expired pursuant to R. Regulating Fla. Bar 1-12.1(g).

IX

21. Absent further court order or any intervening comments of significance that might necessitate additional pleadings or appearances with respect to any proposed amendments herein, The Florida Bar does not presently seek oral argument of any matters within this petition.

X

22. As to all amendments sought in this filing, the bar requests that any such changes be made effective no sooner than 60 days from the date of any court order entered herein so that bar members might be more informed regarding any such revisions.

WHEREFORE, The Florida Bar prays this court will enter an order amending the Rules Regulating The Florida Bar in the manner sought herein.

Respectfully submitted,

John F. Harkness, Jr.
Executive Director
Florida Bar Number 123390

Alan B. Bookman
President 2005-06
Florida Bar Number 154770

Robert M. Brush
Chair, Rules Committee 2005-06
Florida Bar Number 349992

Henry M. Coxe III
President 2006-07
Florida Bar Number 155193

Brian David Burgoon
Chair, Rules Committee 2006-07
Florida Bar Number 114359

Francisco R. Angones
President 2007-08
Florida Bar Number 217093

Dominic M. Caparello
Chair, Rules Committee 2007-08
Florida Bar Number 210171

John George White III
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Florida Bar Number 389640

Nancy Wood Gregoire
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Paul F. Hill
General Counsel
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The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
850/561-5600

October 7, 2008

CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that this petition is typed in 14 point Times New Roman Regular type.

John F. Harkness, Jr.
Executive Director
Florida Bar Number 123390

CERTIFICATE OF SERVICE

I ADDITIONALLY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail on this 7th day of October, 2008, to: Larry E. Ciesla, P.O. Box 1161, Gainesville, Florida 32602; and Jack M. Ross, P.O. Drawer 1168, Gainesville, Florida 32602-1168.

John F. Harkness, Jr.
Executive Director
Florida Bar Number 123390

CERTIFICATE OF READ-AGAINST

I FURTHER HEREBY CERTIFY that the Rules Regulating The Florida Bar set forth within this petition have been read against the most recent copy of *West's Florida Rules of Court 2008*.

Rebecca S. Burke
Rules Administrative Coordinator