

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR
SUBCHAPTERS 6-27 EDUCATION
AND 6-28 ADOPTION

CASE NO.

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. The amendments and action proposed herein were specifically approved by the Board of Governors of The Florida Bar.

II

3. The bar proposes two additional practice areas of legal certification – in education law and adoption law – through a pair of new subchapters within chapter 6 of the Rules Regulating The Florida Bar regarding legal specialization and education programs, as further indicated in the listing that follows.

III

4. Consistent with this court’s administrative order No. AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*, each of these entries 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.

Chapter 6 Legal Specialization and Education

Subchapter 6-27 Standards for Certification of a Board Certified Education Lawyer

Rule 6-27.1 Generally

Rule 6-27.2 Definitions

Rule 6-27.3 Minimum Standards

Rule 6-27.4 Recertification

Explanation: New subchapter 6-27 setting forth standards for an additional certification area in education law.

Reasons: Addition of a certification area regarding education law further expands the existing certification plan (Subchapter 6-3) as a resource for the public to identify lawyers who have met established standards in particular practice areas and who are committed to excellence and professionalism in the practice of law. The opportunity is likewise broadened for lawyers to achieve board certification as a visible way to demonstrate their commitment to quality and professionalism in the delivery of legal services.

Source: Education Law Committee and Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Initiated by the Education Law Substantive Committee and initially proposed in concept to Board of Legal Specialization and Education on January 20, 2006.
- On November 3, 2006, Education Law Committee Vice Chair, Larry Brown, submitted a petition to the Board of Legal Specialization and Education for establishment of this new certification area. *See* April 30, 2007 “Petition for a New Area of Certification in ‘Education Law’” from the Education Law Committee of The Florida Bar (exhibit not included) in Appendix D at 2-4.
- Board of Legal Specialization and Education reviewed a revised petition on May 24, 2007, and voted to approve education law as a certification area, with the caveat that the certification standards would be revised and reviewed at its June 29, 2007 meeting in Orlando. *See* May 23, 2007 correspondence from Education Law

Committee Chair Julie L. Sheppard to the Board of Legal Specialization and Education (discussing the revised petition) in Appendix D at 5.

- Board of Legal Specialization and Education approved proposed education law certification standards as presented on June 29, 2007 by unanimous vote. Staff was given discretion to incorporate minor edits as needed to ensure conformity with style guide and other certification area standards.

- Upon review by Board of Legal Specialization and Education on September 7, 2007, the language in 6-27.3(g) was amended slightly to set forth precisely the credit hours required for initial certification without BLSE intervention.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 4-0 on October 4, 2007. *See Adoption and education law certification moved*, The Florida Bar News, November 1, 2007, at 6, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/525184139577D37D85257380005601E5> (reporting this action) in Appendix D at 9-10.

- On December 14, 2007 board meeting agenda for first reading. *See Theresa E. Davis, Education and adoption law certification still in the works*, The Florida Bar News, December 15, 2008, at 14, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/5D4EF995795B46AC852573A9006E17DB> (reporting this action) in Appendix D at 11-12.

- 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 6-28 Standards for Certification of a Board Certified Adoption Lawyer

Rule 6-28.1 Generally

Rule 6-28.2 Definitions

Rule 6-28.3 Minimum Standards

Rule 6-28.4 Recertification

Explanation:

Reasons: Addition of a certification area regarding adoption law further expands the existing certification plan (Rule 6-3) as a resource for the public to identify lawyers who have met established standards in particular practice areas and who are committed to excellence and professionalism in the practice of law. The opportunity is likewise broadened for lawyers to achieve board certification as a visible way to demonstrate their commitment to quality and professionalism in the delivery of legal services.

Source: Family Law Section Executive Council and Board of Legal Specialization and Education.

Background Information – Member Commentary / Committee Action:

- Initiated by the Family Section Executive Council and presented to the Board of Legal Specialization and Education. *See* January 18, 2007 correspondence from Family Law Section chair Thomas Sasser to BLSE chair Christopher S. Knopik in Appendix D at 6-7.

- Board of Legal Specialization and Education voted 12-0 to endorse the addition of adoption law to the certification plan on January 19, 2007. *See* Theresa E. Davis, *BLSE endorses concept of adoption law certification*, *The Florida Bar News*, March 15, 2007, at 9, available at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/874B5DF7EC200F1E852572980056A3DA> (reporting this action) in Appendix D at 8.

- Board of Legal Specialization and Education considered the proposed certification standards on June 29, 2007 and approved by unanimous vote.

- Staff was given discretion to incorporate minor edits as needed to ensure conformity with style guide and other certification area standards;

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 3-0 on October 4, 2007. *See* *Adoption and education law certification moved*, *The Florida Bar News*, November 1, 2007, at 6, available at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/525184139577D37D85257380005601E5> (reporting this action) in Appendix D at 9-10.

- On December 14, 2007 board meeting agenda for first reading. *See* Theresa E. Davis, *Education and adoption law certification still in the works*, *The Florida Bar News*, December 15, 2008, at 14, available at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/5D4EF995795B46AC852573A9006E17DB> (reporting this action) in Appendix D at 11-12.

- 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.

IV

5. Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file

the two proposals herein was published in the September 15, 2008 issue of The Florida Bar *News*, with the exception of two 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/51299B0E6955CE19852574BE00494675>

V

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

- **R. Regulating Fla. Bar 6-28.3(c):** The lead sentence within this proposal, which defines “substantial involvement” in adoption law lacked the word “the” as indicated by underlining in the following passage: “The applicant must demonstrate, within the 5-year period immediately preceding the date of application, substantial involvement in the placement of minor children for adoption sufficient to demonstrate special competence as an adoption lawyer.”

- **R. Regulating Fla. Bar 6-28.4(b)(3):** This recommended provision regarding the minimum number of cases for recertification in adoption law incorrectly included the word “within” rather than “with” as indicated by the struck-through letters in the following passage: “On special application, for good cause shown, the adoption law certification committee may waive compliance with ~~rule~~ 6-28.4(b)(1) and/or (2) for an applicant who has been continuously board certified in adoption law under these standards for a period of 14 years or more.”

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

8. 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 two 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.

9. All other requested amendments herein were promulgated in full compliance with applicable rules and policies.

VI

10. The bar also notes that there are two other filings before this court seeking amendments to the Rules Regulating The Florida Bar: (a) *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); and *In re: Amendments to the Rules Regulating The Florida Bar*, No. SC 08-1890 (petition filed October 7, 2008).

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

VII

12. 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).

13. A separate two-column presentation follows within Appendix B, which includes the full text of the proposed amendments and an abbreviated recitation of the reasons for such additions, which are more fully expressed in this petition.

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

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

16. 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

17. The expansion of the certification plan to encompass these two new practice areas will benefit members of the public who have increasingly come to rely upon the experience and competence that this program assures. These standards have been approved by the Board of Legal Specialization and Education, the respective bar section or substantive law committee, and the Board of Governors of The Florida Bar.

18. Standards for board certification in education law are proposed to offer qualified lawyers the opportunity to demonstrate and advance their special knowledge, skills, and proficiency in education law and to enhance their professionalism overall. It is anticipated that members of the Education Law Committee, the Florida School Board Attorneys Association, as well as associations of attorneys representing parents, students, community colleges, universities, and private and charter schools will seek such certification. The establishment and attainment of board certification in education law will benefit the public, educational institutions, governmental bodies, and administrative and judicial officers, and will serve as a benchmark to recognize specialized expertise in this area of legal practice.

19. Standards for board certification in adoption law are proposed to protect the interests of children and the rights of Florida citizens, as both adoptive parents and parents placing children up for adoption. Mishandled adoptions can and do create devastating consequences for children and their families. Board certification in adoption law will enable the public to identify those lawyers who have met high standards of professionalism, who have knowledge, skill, and experience, and who are recognized by their peers as qualified and capable of handling adoptions in a professional and competent manner.

20. The Board of Legal Specialization and Education is committed to offering all bar members the opportunity to achieve board certification to raise the standards of legal practice and to assist the public in identifying lawyers who have

demonstrated special knowledge, skills, and professionalism in their specialty field. The two new proposed areas will expand this opportunity for hundreds of lawyers who may qualify for certification and will enhance the value of the program overall for both the public and the profession.

IX

21. Since the official notice of intent to file this petition, only the suggested certification for adoption law has drawn any public reaction – and that commentary has been positive. *See* October 15, 2008 correspondence from Tampa attorney Jeanne T. Tate, and October 15, 2008 correspondence from Tampa attorney Steven Hurwitz, President of the Florida Adoption Council, in Appendix E at 2 & 3, respectively.

22. No other proposal 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).

X

23. 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.

XI

24. Administration of the Florida Certification Plan is cyclical and operates in an established sequence beginning in late summer each year. To offer these two new areas to our members for application filing in 2009, testing in the spring of 2010, and the award of certification by July 1, 2010, new certification committees must be appointed, applications disseminated, examinations developed, and other preparatory work by staff accomplished as early as possible in 2009.

25. Consequently, should the court adopt the requested amendments, the bar requests an effective date on or before May 1, 2009 to allow adequate time to appoint and convene the inaugural committees, to announce availability of the areas for aspiring applicants, and to fully integrate the new practice areas into the internal operations of the Florida Certification Plan within the bar's 2009-10 administrative year.

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

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
President 2008-09
Florida Bar Number 389640

Nancy Wood Gregoire
Chair, Rules Committee 2008-09
Florida Bar Number 475688

Paul F. Hill
General Counsel
Florida Bar Number 137430

The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
850/561-5600

October 22, 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 22nd day of October, 2008, to: Ms. Jeanne T. Tate, 418 W. Platt Street, Suite B, Tampa, FL 33606-2244 and Mr. Steven Hurwitz, President, Florida Adoption Council, 418 W. Platt Street, Tampa, FL 33606

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