

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
PETITION TO AMEND RULES REGULATING
THE FLORIDA BAR - BASIC SKILLS COURSE
RULE 6-12.3 (REQUIREMENT) AND
RULE 6-12.4 (DEFERMENT AND EXEMPTION)

CASE NO.

THE FLORIDA BAR, pursuant to R. Regulating Fla. Bar 1-12.1, petitions this court for an expedited order amending the Rules Regulating The Florida Bar and further requests any necessary waiver of R. Regulating Fla. Bar 1-12.1 applicable to these proceedings. As grounds, The Florida Bar (“the bar”) states the following:

I. Florida Bar Board of Governors Action

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

The amendments and action proposed in this petition were specifically approved by the Board of Governors of The Florida Bar on May 29, 2009.

All requested amendments were promulgated in full compliance with applicable rules and policies, including 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.

II. Discussion of Proposed Amendments

The bar proposes amendments to the basic skills course requirements in Rules 6-12.3 and 6-12.4. The amendments are being requested out of cycle and on an expedited basis in order to provide immediate economic relief to Florida Bar members. Rules 6-12.3 and 6-12.4 rules currently require in person attendance of

Florida Bar members at three basic skills courses sponsored by the Young Lawyers Division (“YLD”). The amendments would remove the requirement for in person attendance at these basic skills courses and would instead permit the bar to offer basis skills courses on-line via electronic seminars as well as in person. The requirement for in person attendance at the “Practicing with Professionalism” program sponsored by the YLD would remain. Additionally, the initial live presentations at which the video recording is made would remain available to those lawyers who prefer to attend in person with live presenters. The change would reduce costs of the basis skills courses for both the bar and the lawyers required to take the courses, and greatly increase availability and convenience of the programs.

Technical resources available today permit videotaping of live presentations which are then available on-line to be downloaded and re-played at the convenience of the lawyer. The on-line replays will be available 24 hours each day, 7 days per week. The technology will permit lawyers across the state and country to view all the available basic skills courses, as opposed to the specific programs offered through live presentations or in person replay. The lawyers therefore will have a broader selection of seminars from which to choose programs more applicable and meaningful to their specific area of practice. Use of this technology will greatly increase availability of all the basic skills courses to lawyers.

As this court is no doubt aware, the economy has created financial problems for most Florida citizens, and lawyers are no exception, particularly young lawyers. In person attendance at the basic skills courses as opposed to on-line presentation is more expensive for lawyers, in terms of both time and actual cost. Although the registration fee will not change, lawyers will have the option to avoid paying travel expenses to attend the basic skills courses in person. Additionally, lawyers will have the option to take the class on-line at their own convenience, such as at night and on weekends, which will allow them to continue their practice uninterrupted. These costs in both time and money are particularly relevant to lawyers who are currently serving in the military or who practice out of state.

Over the past 5 fiscal years, 1,379 lawyers were deemed delinquent for failing to complete the basic skills courses, of which 982 were ultimately reinstated. During the last 4 calendar years, 1,684 lawyers requested extensions to complete the basic skills courses. Increasing availability of the program at the

convenience of the lawyers and decreasing expenses should allow far more lawyers to avoid delinquency and decrease the need for extensions.

Although some basic skills courses feature live presenters, those live presentations are taped and the video tape is shown at subsequent continuing legal education programs. Thus, some lawyers attend the basic skills course in person but see a video tape rather than a live presenter. It is unnecessary to require lawyers to pay travel expenses and take time away from practice to view a videotape that they could view at their own convenience at less cost.

Allowing members to complete Basic Skills course requirements via electronic seminars also would reduce costs to the bar. The bar estimates that \$270,000 will be saved annually by eliminating costs associated with over 100 video replays of basic skills courses.

Availability and convenience of Basic Skills Continuing Legal Education to Young Lawyers Division members would be expanded and ultimately improve membership relations.

If this court agrees that the amendments are appropriate, the bar asks this court to accept this filing out of cycle and enter an order on an expedited basis so that the bar and its members can immediately implement these changes to save time and expense to both the bar and its members. Immediate changes would also increase availability of courses to those lawyers required to take the basic skills courses, reduce delinquency for failure to take the courses, and decrease the need for extensions of time to take the courses.

III. Summary and History of Amendments

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 provides information regarding the development of these proposals as 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 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 proposal.

Chapter 6 Legal Specialization and Education
Subchapter 6-12 Basic Skills Course Requirement Rule

Explanation:

Rule 6-12.3 Requirement

Within subdivision (a), the proposed amendment would eliminate the "in-person" attendance requirement for Basic Skills CLE and allow the method of transmission to be via live or electronic means. The YLD executive committee considered a requirement that at least 1 of the 3 Basic Skills courses be attended "in-person" but this proposal was rejected due to the difficulty involved in monitoring and additional expenses.

Rule 6-12.4 Deferment and Exemption

Within subdivision (b)(2)(B), the proposed amendment changes the "attendance" requirement to "completion" for Basic Skills CLE after a deferment expires.

Reasons: These proposals reduce costs and expand availability and convenience of Basic Skills CLE to young lawyers who are required to fulfill these basic course requirements. The proposals also reduce costs to the bar. These proposed amendments will also allow YLD to be at the forefront of technological advancements by using electronic meeting facilities.

Source: Young Lawyers Division Board of Governors

Background Information – Member Commentary / Committee Action:

- Initiated by the Young Lawyers Division Board of Governors and favorably reported by voice vote at the January 2009 YLD board meeting.
- On January 26, 2009, YLD Chair, Jewel White Cole submitted a proposal to amend R. Regulating Fla. Bar 6-12.3 and 6-12.4. *See* Appendix D.
- Budget Committee favorably reported fiscal review by e-mail vote of 6-0 on March 13, 2009.
- Board of Legal Specialization and Education favorably reported by voice vote on March 19, 2009.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on April 2, 2009.
- On April 3, 2009 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by voice vote of 8-0 on May 5, 2009 conference call.

Board Action: Board of Governors approved on consent on May 29, 2009.

IV. Official Notice

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the July 1, 2009 issue of *The Florida Bar News*. 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/22061C855933C7D1852575DA00675938>.

V. Other Pending Petitions

Three 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 and are still pending – *In re: Amendments to the Rules Regulating The Florida Bar – Rule 4-7.1, Lawyer to Lawyer and Lawyer to Client Communication*, No. SC 09-394 (report filed January 27, 2009); *In re: Amendments to the Rules Regulating The Florida Bar*, 978 So.2d 96 (Fla. 2007), No. SC06-736 (Conference and Dialogue, report filed June 2, 2009); and *In re: Amendments to the Rules Regulating The Florida Bar*, No. SC08-1890 (Master File petition filed October 7, 2008).

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

VI. Appendices

The complete text of all proposals 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).

A separate two-column presentation follows within Appendix B, which includes extracted text of affected rules, proposed amendments, and an abbreviated

recitation of the reasons for such changes, which are more fully stated in this petition.

As discussed above, the notice of intent to file this petition is included in Appendix C.

As discussed above, the comments and background materials from the Young Lawyers' Division Chair, Jewel White Cole, are included in Appendix D.

VII. Response to Proposed Amendments

The bar has received no comments regarding the proposed amendments within this petition. However, in anticipation that additional comments may be provided to this court 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).

VIII. Oral Argument

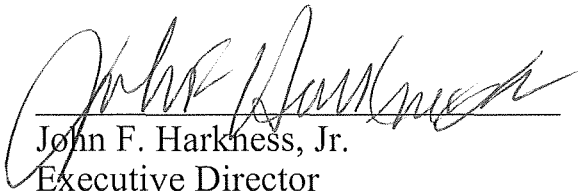
The bar does not presently seek oral argument of any matters within this petition, absent further court order or any intervening comments of significance on these proposed amendments that might require additional response or appearance,.

IX. Effective Date of Court Order

As to all amendments sought in this filing, the bar requests that any changes be made effective 30 days after the date of this court's order, to provide the bar with the time necessary to implement the order and inform bar members of the amendments. The bar also requests that the court render an opinion as expeditiously as the court considers necessary to accommodate the changing technical and economic environment.

WHEREFORE, The Florida Bar prays this court will enter an order amending the Rules Regulating The Florida Bar as requested in this petition.

Respectfully submitted,



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

Jesse H. Diner
President 2009-10
Florida Bar Number 161472

Ramon Abadin
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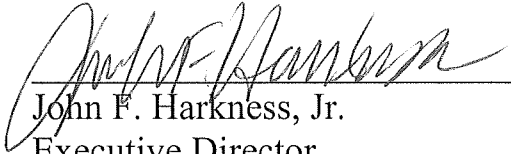
Roger James Haughey II
Chair, Young Lawyers Division 2009-10
Florida Bar Number 123617

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

August 10, 2009

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

August 10, 2009

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*.

A handwritten signature in cursive script that reads "Rebecca S. Burke". The signature is written in black ink and is positioned above a horizontal line.

Rebecca S. Burke

Rules Administrative Coordinator

August 10, 2009

APPENDIX A

**PROPOSED
AMENDMENTS IN
LEGISLATIVE FORMAT**

August 10, 2009

RULES REGULATING THE FLORIDA BAR

1

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

* * *

SUBCHAPTER 6.12. BASIC SKILLS COURSE REQUIREMENT RULE

* * *

RULE 6-12.3 REQUIREMENT

(a) **Course Components.** Compliance with BSCR shall include ~~in-person attendance at~~:

(1) in-person attendance at a 1-day Practicing with Professionalism program sponsored by the YLD; and

(2) completion of 3 elective, basic, substantive continuing legal education programs sponsored by the YLD.

(b) **Time for Completion.** BSCR shall be completed as follows:

(1) the Practicing with Professionalism program shall be completed no sooner than 12 months prior to or no later than 12 months following admission to The Florida Bar; and

(2) the 3 elective, basic, substantive continuing legal education programs shall be completed during the member's initial 3-year continuing legal education requirement reporting cycle assigned upon admission to The Florida Bar.

RULE 6-12.4 DEFERMENT AND EXEMPTION

(a) Deferment of Practicing with Professionalism Requirement.

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(1), if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member elects inactive membership status in The Florida Bar; or

(E) the member is a full-time government employee who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination, as long as the member continuously remains in government practice.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(1) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) attend the Practicing with Professionalism program within 12 months of deferment expiration;

(b) Deferment of Basic Level YLD Courses.

(1) *Deferment Eligibility.* A member of The Florida Bar is eligible to defer compliance with the requirements of rule 6-12.3(a)(2) if:

(A) the member is on active military duty;

(B) compliance would create an undue hardship;

(C) the member is a nonresident member whose primary office is outside the state of Florida;

(D) the member is a full-time governmental employee; or

(E) the member elects inactive membership status in The Florida Bar.

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) ~~attend~~complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration.

(c) Exemption.

(1) *Governmental Practice.* An exemption from rule 6-12.3(a)(1) shall be granted if a member who had benefitted from the deferment of the Practicing with Professionalism requirement as of its May 12, 2005, elimination has already or thereafter been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years. An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law for a Florida or federal governmental entity as a full-time governmental employee for a period of at least 6 years.

(2) *Foreign Practice.* An exemption from rule 6-12.3(a)(2) shall be granted if a member has been continuously engaged in the practice of law (non-governmental) in a foreign jurisdiction for a period of 5 years, can demonstrate completion of 30 hours of approved continuing legal education within the immediate 3-year period, and can attest that the continuing legal education completed has reasonably prepared the member for the anticipated type of practice in Florida.

APPENDIX B

**SELECTED TEXT OF
PROPOSED
AMENDMENTS WITH
REASONS FOR CHANGE**

August 10, 2009

RULES REGULATING THE FLORIDA BAR

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

* * *

SUBCHAPTER 6.12. BASIC SKILLS COURSE REQUIREMENT RULE

* * *

RULE 6-12.3 REQUIREMENT

(a) Course Components. Compliance with BSCR shall include ~~in-person attendance at:~~

(1) in-person attendance at a 1-day Practicing with Professionalism program sponsored by the YLD; and

(2) completion of 3 elective, basic, substantive continuing legal education programs sponsored by the YLD.

(b) Time for Completion. [no change]

Need to reduce costs; Need to expand availability and convenience of Basic Skills CLE to YLD members; allows YLD to be at the forefront of technological advancements if using podcast/webcast.

RULE 6-12.4 DEFERMENT AND EXEMPTION

(a) Deferment of Practicing with Professionalism Requirement. [no change]

(b) Deferment of Basic Level YLD Courses.

(1)*Deferment Eligibility.* [no change]

(2)*Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) ~~attend~~complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration;

(c) Exemption. [no change]

Allows members (in particular out-of-state members and military) to complete the course requirements without having to travel. Will ultimately improve compliance with basic skills requirements and allow more selection of substantive basic skills seminars of interest as opposed to selecting from a limited basic skills schedule.

Minor editorial error to correct West's – replaces the semicolon with a period (SC04-914, May 12, 2005)

APPENDIX C

THE FLORIDA BAR NOTICE OF FILING

July 1, 2009



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July 1, 2009

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Basic Skills Course Requirement Rule proposals to be filed

The Board of Governors of The Florida Bar hereby gives notice of filing with the Supreme Court of Florida, on or about August 4, a petition to amend the Rules Regulating The Florida Bar. Rule 1-12.1, Rules Regulating The Florida Bar, governs such matters. The full text of the proposed amendments is printed below. A copy of the petition will be available on the Bar's Web site at www.floridabar.org and the court's web site at www.flcourts.org after the petition has been filed. If you do not have Internet access, you may request a copy by contacting the The Florida Bar, 651 East Jefferson Street, Tallahassee 32399-2300 or calling (850) 561-5600, Ext. 5751. Members who desire to comment on these proposed amendments may do so within 30 days of the filing of the Bar's petition. Comments should be filed directly with the clerk of the Supreme Court of Florida, and a copy must be served on the executive director of The Florida Bar.

RULES REGULATING THE FLORIDA BAR

* * *

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

* * *

SUBCHAPTER 6.12. BASIC SKILLS COURSE REQUIREMENT RULE

* * *

RULE 6-12.3 REQUIREMENT

(a) Course Components. Compliance with BSCR shall include ~~in-person attendance at:~~

(1) ~~in-person attendance at~~ a 1-day Practicing with Professionalism program sponsored by the YLD;
and

(2) completion of 3 elective, basic, substantive continuing legal education programs sponsored by the YLD.

(b) Time for Completion. [no change]

RULE 6-12.4 DEFERMENT AND EXEMPTION

(a) Deferment of Practicing with Professionalism Requirement. [no change]

(b) Deferment of Basic Level YLD Courses.

(1) *Deferment Eligibility.* [no change]

(2) *Deferment Expiration.* A deferment of the requirements of rule 6-12.3(a)(2) as provided under this rule shall expire at the time the member is no longer eligible for deferment. Upon expiration, a member must:

(A) promptly notify The Florida Bar in writing of the date deferment expired; and

(B) ~~attend~~complete 3 elective, basic, substantive continuing legal education programs sponsored by the YLD within 24 months of deferment expiration.

(c) Exemption. [no change]

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APPENDIX D

**BACKGROUND
MATERIALS**

August 10, 2009

KEY POINTS REGARDING PROPOSED RULE CHANGE

PROPOSED RULE CHANGE

- Eliminates “in-person” attendance requirement for Basic Skills CLEs. Leaves the method of transmission of Basic Skills CLEs unrestricted (i.e. could be live, video replay, webcast).
- “In-Person” attendance will still be required for Practicing with Professionalism only.
- GOAL: Phase out video replays and move toward providing Basic Skills CLEs only via live seminar or podcast/webcast (which would not be live).
- The Committee considered (but rejected) a requirement that at least one of the three Basic Skills courses be attended “in-person” because of logistical (too difficult for the Bar to monitor) and monetary (additional room costs) concerns.

ABOUT PODCAST/WEBCAST

- This permits an end user to view the Basic Skills CLE from their computer at their convenience (24 hours a day/seven days a week soon after the actual live event).
- Podcast: In a podcast, the entire program is downloaded to the end user’s computer.
- Webcast: In a webcast the participant is actually viewing the program from the server of the third-party vendor (who is contracted through the Florida Bar).
- Security Measures to Verify Attendance: Participants “logged on” to a seminar will see a “pop-up screen” programmed at random intervals. The participant will be prompted to enter a simple code within 20 seconds. If the participant does not enter the code within 20 seconds, one minute later, a second pop up screen will appear. If the participant fails to enter the code at that time, the box will expire, and the seminar will terminate. The participant will be deemed absent from the seminar and will not be given credit for participation. Each code will be user-specific, thereby limiting the possibility of participant collusion in the event that one participant attempts to cover another participant’s absence from the video feed. **Note**: This security measure is not available with live webcasts - - therefore, the Committee does not recommend using live webcasts. Instead, Basic Skills CLEs would be available on-line *after* the live seminar is conducted.

EXPENSE/REVENUE ISSUES

- Eliminating video replays will result in savings to the YLD by eliminating accommodation and staff costs (i.e. hotel conference rooms rentals, bar office rentals, and Bar staff hourly wages who administer the video replay.)
- Reduce copying costs. Those attending via podcast/webcast would download the course materials in pdf format rather than receiving printed course materials from the Bar.
- Podcast/Webcast would not cost the YLD anything. Instead, participants attending a CLE via webcast would pay an additional fee of approximately \$20.

BENEFITS OF RULE CHANGE

- Cost savings discussed above.
- Expands availability of Basic Skills CLEs. This will facilitate young lawyer's attendance at and compliance with their basic skills course requirements by allowing them to select substantive seminars of interest (as opposed to selecting from a limited schedule).
- Convenience to members who do not live or work in the cities where the seminars are conducted, which is of particular benefit to our out- of-state members.
- Decreased costs to our young lawyers in not having to travel to attend courses.
- Allows the Young Lawyers Division to be at the forefront of technological advancements.