

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE FLORIDA
BAR (BIANNUAL REPORT)

CASE NO. SC10-1967

**COMMENTS OF FLORIDA BAR MEMBER TIMOTHY P. CHINARIS
REGARDING PROPOSED RULE 5-1.2(d)**

COMES NOW Florida Bar member Timothy P. Chinaris, who files the following comments in opposition to The Florida Bar's petition asking this Court to approve proposed rule 5-1.2(d), Rules Regulating The Florida Bar, entitled "Signing Trust Account Checks," and states:

1. The undersigned is a member in good standing of The Florida Bar.
2. The undersigned served as Ethics Director of The Florida Bar from 1989 to 1997, is a member and past chair of the Bar's Professional Ethics Committee, teaches legal ethics at an ABA-approved law school, and consults with and represents lawyers and law firms on legal ethics matters. These comments are those of the undersigned individually.
3. These comments are filed in response to the Notice published in the September 1, 2010, issue of the *Florida Bar News*.

4. The undersigned respectfully requests that the Court decline to approve proposed rule 5-1.2(d).

5. About one-third of Florida lawyers in private practice are solo practitioners. The Florida Bar, “Results of the 2009 Membership Opinion Survey.” More than half of Florida lawyers work in an office with five or fewer lawyers. *Id.* The proposed rule will impose a burden that will be borne disproportionately by those lawyers who practice solo or in very small firms. Large firms are able to spread the trust account signing authority among several lawyers, one of whom is likely to be readily available when a trust account check must be issued on short notice. Lawyers who practice alone and in very small firms do not have this option.

6. The Bar’s petition asserts that the proposed rule will protect lawyers and the public from “losses due to improper actions by nonlawyers who have in the past been able to sign trust account checks with the approval of a lawyer.” The Bar, however, has offered no evidence to support this assertion. A review of this Court’s disciplinary opinions concerning trust account misappropriations shows that in the vast majority of cases lawyers have taken money from their own trust accounts. The proposed rule would not curb such misconduct. Nor will the proposed rule deter an unscrupulous nonlawyer employee who is bent on stealing trust funds.

7. If this Court determines that a rule on this subject is necessary, the undersigned would urge the Court to adopt a rule containing the essential principles expressed in the advisory ethics opinions cited above. Lawyers, who bear the ultimate responsibility for the safekeeping of trust funds in their possession, should be allowed to authorize “a trusted nonlawyer employee to draw checks on the trust account upon proper authorization and under appropriate supervision.” Florida Ethics Opinion 64-40 (Reconsideration). As this Court recently stated, “There is a critical distinction between an attorney’s office manager and a person who is neither employed by, responsible to, nor otherwise under the supervision and control of the lawyer . . .” *Florida Bar v. Hines*, 39 So. 3d 1196, 1201 (Fla. 2010).

8. For the foregoing reasons, this Court should decline to adopt the Bar’s proposed rule 5-1.2(d), Rules Regulating The Florida Bar, entitled “Signing Trust Account Checks.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by

U.S. Mail on this 12th day of November 2010, to:

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CERTIFICATE OF TYPE SIZE AND STYLE

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

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