

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

BIANNUAL FILING 2010

The Florida Bar (the bar), pursuant to R. Regulating Fla. Bar 1-12.1, petitions this court for an order amending the Rules Regulating The Florida Bar and states:

I. Authority to File Petition

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

II. Bifurcation of Petition

2. The bar's submission has been bifurcated, with both petitions filed simultaneously. The first petition, entitled Petition To Amend The Rules Regulating The Florida Bar - Biannual Filing 2010, encompasses those rules that the bar believes may require more consideration and reflection by this Court. The second petition, entitled Petition To Amend The Rules Regulating The Florida Bar - Biannual Filing 2010 Housekeeping, comprises those rules that the bar believes may require less contemplation by this Court and for which this Court may be inclined to expedite review. Many amendments in the housekeeping petition involved editorial changes, housekeeping amendments to update the rules based on the passage of prior amendments, changes to codify long-standing practice, and other amendments likely to require less of this Court's attention than the proposals in the first petition.

3. The 2 petitions include proposed new rules or amendments to existing rules that were approved by the Board of Governors between July 2008 and July

2010 with the exception of amendments currently pending before this Court, which are discussed in §VIII, and with the exception of the minor edits noted in §VII.

4. This petition is the biannual filing that may require more of this Court's time and reflection.

III. Organization of Amendments

5. The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. Section III below provides information regarding development of these rules proposals as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*. Each entry therefore provides the following information: 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 Board of Governors; and dissenting views within the Board of Governors, if any, regarding each submission.

IV. Amendments Summary and History

6. Some rules were the subject of multiple proposed revisions that were considered at different times. When that occurred, those amendments are reported as separate items to better reflect the distinctive aspects of their development.

Rule 1-3.3 Official Bar Name and Address

Explanation: Adds business e-mail address, if the member has one, to the list of information a member must designate and submit to the bar; changes title from "Name and Address" to "Name and Contact Information"; rewords language and adds titles for subdivision designation to meet the requirements of this Court's Guidelines for Rules Submissions.

Reasons: With the advent of e-filing and e-service in Florida, bar members will need to have e-mail accounts for filing court documents. The bar should require that all bar members provide a business-use email address, if a member has one, and that it be part of the bar record. See Appendix D, page 2.

Source: Proposed by Board of Governors member Murray Silverstein and President Mayanne Downs.

Background Information – Member Commentary / Committee Action:

- Referred to Communications Committee for consideration;

Communications Committee referred the amendment to the Rules Committee with a recommendation for development of a rule amendment requiring bar members to provide e-mail addresses by teleconference vote on December 1, 2009; Rules Committee considered two options.

- Rules Committee favorably reported substantive and procedural review of option #2 by ballot vote of 5-0 on January 6, 2010.

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on January 11, 2010.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 7-0 on January 28, 2010.

- On January 29, 2010 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported by unanimous vote on May 28, 2010.

Rule 1-3.5 Retirement

Explanation: In connection with proposed amendments to rule 1-3.7 in this petition, provides for permanent retirement without possibility of reinstatement.

Reasons: The current rules are not flexible enough to afford the proper remedies in certain limited situations that Lawyer Regulation has encountered and the addition of a rule allowing for permanent retirement would resolve this situation. The bar has used permanent retirement in the following situations:

A 50-year bar member with no prior disciplinary history neglected some cases. He realized that it was time for him to retire, however a non-permanent retirement would allow him to petition for reinstatement within 5 years, so the bar would have needed to proceed on the discipline case and seek a public reprimand. As an alternative, the bar allowed him to permanently retire and agreed to dismiss the pending discipline case. The referee on the case thought this was a way to protect the public and at the same time, allow this 50-year member to retire without any discipline. This Court of Florida accepted the report of referee recommending dismissal of the case.

Some bar members have received either a diversion or a minor misconduct from grievance committees. Both of those grievance committee decisions require the member to complete a Practice and Professionalism Enhancement Program. These members did not timely complete the program. The bar's Lawyer Regulation

Department contacted the members who stated that they were no longer practicing law and had no intention of ever practicing law. The bar gave them the option of permanently retiring and informed them that if they chose to accept that option, they would not be prosecuted for failing to comply with the grievance committee recommendation.

In one case, a member had been required to complete a Law Office Management Assistance Service review, but that member was unable to complete the review because the member was teaching school in Atlanta and did not have a law office to review. In another case, a member failed to attend a workshop as a condition of diversion, but was selling houses in North Carolina.

The most recent situation involved a lawyer who was living out of state and was conditionally admitted. The conditional admittance order required the member to reside in Florida. The member did not want to move and the only way to enforce the order was to file a petition seeking revocation of his admittance but the member did not want a "black mark" on his record. The Director of Lawyer Regulation offered him permanent retirement, and he accepted.

Amendments provide flexibility and proper remedy in certain limited situations when the lawyer is certain he/she will no longer be practicing in Florida. Permanent retirement is not used for serious violations or as a substitute for a disciplinary resignation. Members are advised that this option should be accepted only if they are certain they have no desire to practice law in Florida.

Under circumstances such as those noted above, use of permanent retirement conserves resources and protects the public. See Appendix D, page 3.

Source: Florida Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on September 4, 2008.
- On October 3, 2008 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

Board Action: Board of Governors favorably reported by consent on December 12, 2008.

Rule 1-3.6 Delinquent Members

Explanation: Within subdivisions (d) and (f), deletes provision that permits extension of deadlines by the Board of Governors for restitution or an award in fee arbitration proceedings.

Reasons: Restitution orders are made by this Court and arbitration awards by arbitration panels. The bar does not have authority to change these orders and awards so it is inappropriate for subsections (d) and (f) to say "unless the time is extended by the board of governors for good cause shown."

Also, even in diversion cases where there is no court order, restitution money is not money owed to the bar, but money owed to the client, and only the client should be able to work out a payment plan.

Source: Florida Bar Disciplinary Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by voice vote of 6-0 on November 16, 2009.
- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on November 17, 2009.
- Program Evaluation Committee favorably reported strategic plan review on December 10, 2009.
- On Board of Governors meeting agenda for first reading on December 11, 2009.

Board Action: Board of Governors favorably reported on consent on January 29, 2010.

Rule 1-3.7 Reinstatement to Membership

Explanation: In connection with proposed amendments to rule 1-3.5 in this petition, within new subdivision (e), provides that members who are permanently retired may not be reinstated, but must be readmitted through the Florida Board of Bar Examiners process, and renumbers subsequent paragraphs accordingly.

Reasons: The current rules are not flexible enough to afford the proper remedies in certain limited situations that Lawyer Regulation has encountered and the addition of a rule allowing for permanent retirement would resolve this situation. The bar has used permanent retirement in the following situations:

A 50-year member with no prior disciplinary history neglected some cases. He realized that it was time for him to retire, however a non-permanent retirement would allow him to petition for reinstatement within 5 years, so the bar would have needed to proceed on the discipline case and seek a public reprimand. As an

alternative, the bar allowed him to retire permanently and agreed to dismiss the pending discipline case. The referee on the case thought this was a way to protect the public and at the same time, allow this 50-year member to retire without any discipline. This Court accepted the report of referee recommending dismissal of the case.

Some bar members have received either a diversion or a minor misconduct from grievance committees. Both of those grievance committee decisions require the member to complete a Practice and Professionalism Enhancement Program. These members did not timely complete the program. The bar's Lawyer Regulation Department contacted the members who stated that they were no longer practicing law and had no intention of practicing law again. The bar gave them the option of permanently retiring and informed them that if they chose to accept that option, they would not be prosecuted for failing to comply with the grievance committee recommendation.

In one case, a member had been required to complete a Law Office Management Assistance Service review, but that member was unable to complete the review because the member was teaching school in Atlanta and did not have a law office to review. In another case, a member failed to attend a workshop as a condition of diversion, but was selling houses in North Carolina.

The most recent situation involved a lawyer who was living out of state and was conditionally admitted. The conditional admittance order required the member to reside in Florida. The member did not want to move and the only way to enforce the order was to file a petition seeking revocation of his admittance but the member did not want a "black mark" on his record. The Director of Lawyer Regulation offered him permanent retirement, and he accepted.

Permanent retirement is not used for serious violations or as a substitute for a disciplinary resignation. Members are advised that this option should be accepted only if they are certain they have no desire to practice law in Florida.

Under circumstances such as those noted above, use of permanent retirement conserves resources and protects the public. See Appendix D, page 3.

Source: Florida Bar Lawyer Regulation Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on September 4, 2008.
- On October 3, 2008 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

Board Action: Board of Governors favorably reported by consent on December 12, 2008.

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

Explanation: Adds commentary defining what constitutes an appearance for purposes of the rule and that a non-Florida lawyer making an appearance in a Florida court is required to comply with rule 2.510 of the Fla. R. Jud. Admin. Adds commentary providing an explanation and example of how to calculate the number of appearances in a 365 day period.

Reasons: The additional commentary explains the rule so those using it can understand it better. These comments answer questions that are commonly posed to the Unlicensed Practice of Law Department by lawyers admitted in other jurisdictions.

Source: Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Favorably reported by the Standing Committee on the Unlicensed Practice of Law by voice vote of 18-0 on June 25, 2009.

- Rules Committee favorably reported substantive and procedural review by voice vote of 6-0 on August 25, 2009 conference call.

- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on August 26, 2009.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 5-0 on September 24, 2009.

- On September 25, 2009 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent on December 11, 2009.

Rule 1-3.12 Provision of Legal Services Following Determination of Major Disaster

Explanation: Proposed new rule, in connection with proposed amendments to rule 4-5.5 in this petition, allows attorneys from other jurisdictions to provide legal services in Florida after this Court determines that a major disaster affecting the justice system has occurred; conforms with American Bar Association (ABA) Model Rule.

Reasons: Following hurricanes Rita and Katrina, the judicial systems in Alabama, Mississippi, and Louisiana were substantially damaged or crippled. In order to provide adequate representation for those in need, the ABA proposed a model court rule relaxing practice restrictions on attorneys not admitted in the jurisdiction sustaining the disaster. The new rule would allow lawyers in other states to come to Florida on a pro bono basis to assist victims of natural disasters. The new rule would allow lawyers from another state affected by a natural disaster to practice law in Florida on a temporary basis to assist their clients in their home jurisdiction. The rule contains procedures and safeguards. See Appendix D, pages 4-14.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee referred to Unlicensed Practice of Law Committee by voice vote of 8-0 on December 13, 2007 conference call.
- Unlicensed Practice of Law Committee favorably reported by unanimous voice vote on January 18, 2008.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0 on February 28, 2008.
- Budget Committee withdrew from March 28, 2008 Board of Governors agenda pending further review; Budget Committee favorably reported fiscal review by ballot vote of 7-0 on May 6, 2008.
- Program Evaluation Committee favorably reported substantive review by voice vote of 5-1 and strategic plan review by 7-0 on May 29, 2008.
- On May 30, 2008 Board of Governors meeting agenda for first reading.
- Rules Committee favorably reported procedural review by voice vote of 5-0 on July 24, 2008.

Board Action: Board of Governors favorably reported by voice vote on July 25, 2008.

Rule 1-8.4 Clients' Security Fund

Explanation: Deletes "by a member of The Florida Bar" and "that comes into the member's possession or control, all" to conform with rule 7-1.1.

Reasons: Amendments are necessary in light of changes already made to Chapter 7 and rule 7-1.1. The phrase "by a member of The Florida Bar" is being deleted because the theft can be by a nonlawyer employee. The phrase "that comes into the possession or control, all" is being deleted because the theft can be by someone other than the attorney hired by the claimant. The amendments would

allow reimbursement from the fund if the theft is by a nonlawyer employee of the disciplined lawyer.

Source: Clients' Security Fund Procedure Committee

Background Information – Member Commentary / Committee Action:

- Clients' Security Fund Procedures Committee approved by e-mail ballot of 11-0 on June 9, 2010.

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on June 23, 2010.

- Rules Committee favorably reported substantive and procedural review by voice vote of 3-0 and ballot vote of 1-0 on July 1, 2010.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on July 22, 2010.

Board Action: Board of Governors approved waiver of 2nd reading and favorably reported the amendment at the July 23, 2010 Board of Governors meeting.

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

Explanation: Within subdivisions (d), (g), and (h), adds that publication of proposed amendments, submissions to this Court, and final action by this Court may be on the bar's website or in the bar *News*.

Reasons: Publication on the web lowers costs and allows earlier publication to the membership since printer deadlines would not be an issue. Because space is not an issue on website publication, the bar would also be able to publish more information regarding proposed amendments, to provide more information to bar members and the public. See Appendix D, page 2.

Source: Florida Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by ballot vote of 5-0 on January 6, 2010.

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on January 11, 2010.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 7-0 on January 28, 2010.

- On January 29, 2010 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported by unanimous vote on May 28, 2010.

Rule 3-5.1 Types of Discipline; Generally

Explanation: This is the first of two different proposals for amendment of this rule. Within subdivision (c), increases the maximum stated period of time for which probation may be imposed, from 3 years to 5 years.

Reasons: The amendment is at the recommendation of the Florida Board of Bar Examiners Character & Fitness Commission 2009 Report. Under certain circumstances, FLA, Inc. believes a 5-year probationary period would be beneficial to a member's rehabilitation, depending on the severity and length of the bar member's substance abuse problem. Numerous conditional admittees are placed on a 5-year probationary term by this Court. See Appendix D, pages 15-17.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Report and referrals discussed at Disciplinary Procedure Committee meeting on August 25, 2006 and subcommittees were appointed; 1 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 of Governors meeting agenda.

- Rules Committee favorably reported by e-mail/fax ballot of 4-0 on March 12, 2007, due to errors in the backup documents within the March 8 ballot.

Board Action: Board of Governors approved by voice vote on March 30, 2007. Amendments to subdivision (d) were withdrawn from the Master Filing in August of 2008 and the amendments to subdivision (c) were also erroneously withdrawn at that time, creating a delay in this filing.

Rule 3-5.1 Types of Discipline; Generally

Explanation: This is the second of two different proposals for amendment of this rule. In connection with proposed amendments to rules 3-6.1, 3-7.7, 3-7.9, and new rule 3-7.12, within this petition, new subdivision (g) allows for disciplinary revocation for a minimum of five years with the option of disciplinary revocation without leave to apply for re-admission; within subdivision (h), requires that members granted a disciplinary revocation notify clients and other parties of the revocation.

Reasons: This rule would allow efficient disposition of cases involving lawyers who have perpetrated serious offenses who will not or cannot plead guilty to violating bar rules due to exposure to criminal prosecution, but are willing to cease practicing under a disciplinary revocation rule that would not require admission of guilt. The bar would otherwise have to go through long investigations, hearings and appeals, in which the respondents might not be found guilty. Such disciplinary revocation is defined in related rule 3-7.12 as "the functional equivalent of disbarment." A prior disciplinary resignation rule, 3-5.1(j) was eliminated in 2005, *In re Amendments to Rules Regulating The Florida Bar*, 918 So.2d 655 (Fla. 2005) and replaced with a new rule 3-5.1(j) Consent to Disbarment. The prior rule allowed for a minimum of three years disciplinary resignation. The new rule requires a minimum of five years disciplinary revocation and further specifically requires Board of Governors approval for all disciplinary revocations. See Appendix D, pages 20-23.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported by voice vote of 6-1 on July 11, 2008 the substance of the new rule, but directed staff to refine and renumber the rule; these changes were made.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 3-0 on September 22, 2008.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.
- On December 12, 2008 Board of Governors meeting agenda for first reading.
- Disciplinary Procedure Committee staff liaison referred back to Disciplinary Procedure Committee for further review January 2009 due to pending amendments on companion rule 3-7.9; Disciplinary Procedure Committee approved by vote of 6-0 on January 29, 2009, to include language in rule 3-7.9 allowing a respondent to enter into a disbarment on consent without admitting guilt.
- On April Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported by voice vote on May 29, 2009.

Rule 3-5.2 Emergency Suspension and Interim Probation

Explanation: This is the first of two different proposals for amendment of this rule. In connection with proposed amendments to rule 3-7.13 in this petition, the title of the rule is expanded to add "Or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct;" within subdivision (a), adds procedures for an emergency suspension when an attorney receives discipline in a foreign jurisdiction; within subdivision (b), allows placement on the inactive membership list in lieu of probation for incapacity unrelated to misconduct.

Reasons: A recent decision of this Court, declining to place a lawyer on the inactive list for incapacity not related to misconduct after an order of emergency interim probation, revealed that the lawyer lacked the capacity to practice law. This matter sparked review of the existing rule. The proposed amendment, in conjunction with a proposed amendment to rule 3-7.13, applies the fast track process of rule 3-5.2 for expedited protection of the public. See Appendix D, page 22.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on July 11 and July 24, 2008. Disciplinary Procedure Committee favorably reported by voice vote of 4-0 on July 24, 2008.
- On October 3, 2008 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by fax/e-mail vote of 9-0 on November 12, 2008.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

Board Action: Board of Governors favorably reported by consent on December 12, 2008.

Rule 3-5.2 Emergency Suspension and Interim Probation

Explanation: This is the second of two different proposals for amendment of this rule. Within subdivisions (a) and (b), clarifies that the petition for emergency suspension or interim probation constitutes a formal complaint and allows the respondent a specific amount of time to file an answer to the bar's petition; adds new subdivision (f), Appointment of Referee, to clarify when a referee is appointed;

redesignates and adds titles and language to subsequent subdivisions to clarify the process for handling emergency suspensions and interim probations.

Reasons: The current rule requires redundant complaint filings by bar counsel when the rules violated by respondents can easily be set forth in the bar's petition for emergency suspension. Requiring follow-up complaints by bar counsel is unnecessary and a burden on existing resources of the bar and the court system. The proposed amendments would eliminate the need for bar counsel to file a formal complaint after this Court grants a petition for emergency suspension or interim probation. This proposed rule change follows a similar elimination of the requirement of filing a follow-up complaint in felony suspension cases. See, Rules Regulating Fla. Bar 3-7.2.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on July 16, 2009.
 - Budget Committee favorably reported fiscal review by ballot vote of 7-0 on August 26, 2009.
 - Disciplinary Procedure Committee approved further substantive changes by voice vote of 8-0 on September 24, 2009.
 - Disciplinary Procedure Committee favorably reported with changes by voice vote of 7-0 on December 10, 2009.
 - Rules Committee favorably reported procedural review by ballot vote of 5-0 on January 6, 2010.
 - Program Evaluation Committee favorably reported strategic plan review by voice vote of 7-0 on January 28, 2010.
 - On January 29, 2010 Board of Governors meeting agenda for first reading.
- Board Action:* Board of Governors favorably reported by unanimous voice vote on May 28, 2010.

Rule 3-6.1 Generally

Explanation: In connection with proposed amendments to rules 3-5.1, 3-7.7, 3-7.9, and new rule 3-7.12 within this petition, adds disciplinary revocation to the group of former lawyers who must meet employment requirements.

Reasons: The proposed new rules on disciplinary revocation contained within rule 3-7.12 and 3-5.1(g), require updating rule 3-6.1, which imposes employment reporting requirements on attorneys who are disbarred, suspended, have resigned or are otherwise unable to practice. If this Court adopts those amendments, this rule

must be updated to include lawyers no longer eligible to practice due to disciplinary revocation. See Appendix D, pages 20-23.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Initial review by Disciplinary Procedure Committee on July 24, 2008; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 3-0 on September 22, 2008.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.
- On December 12, 2008 Board of Governors meeting agenda for first reading.
- Disciplinary Procedure Committee staff liaison referred back to Disciplinary Procedure Committee for further review January 2009 due to pending amendments on companion rule 3-7.9; Disciplinary Procedure Committee approved by vote of 6-0 on January 29, 2009, to include language in rule 3-7.9 allowing a respondent to enter into a disbarment on consent without admitting guilt; rule 3-7.9 referred back to Program Evaluation Committee for strategic plan review and returned to Board of Governors on April meeting agenda for first reading.

Board Action. Board of Governors favorably reported by voice vote on May 29, 2009.

Rule 3-7.7 Procedures Before Supreme Court of Florida

Explanation: In connection with proposed amendments to rules 3-5.1, 3-6.1, 3-7.9, and new rule 3-7.12, in this petition, within subdivisions (c) through (f), amends the nomenclature of the bar rule and time periods for filing answer briefs and reply briefs identical to those for filing notices of appeal and briefs in regular appeals under rule 9.210, Florida Rules of Appellate Procedure; within subdivision (h), allows pending disciplinary cases to be dismissed by this Court in disciplinary revocation orders.

Reasons: At the request of the Clerk of this Court during an in-person meeting with bar staff, the proposed changes to subdivisions (c) through (f) are proposed in order to more accurately reflect the relief being sought and to bring the bar rules into conformance with the Florida Rules of Appellate Procedure. The current rule is confusing to appellate practitioners who do not normally handle bar defense

matters because the terminology and time periods of the current rule differ from established procedures under the Florida Rules of Appellate Procedure. The 60-day time period for notice of intent to seek review of a referee's report will, however, remain the same as the former rule since the Board of Governors only meets every other month. Within subdivision (h), adds disciplinary revocation orders, consistent with court procedures under the former disciplinary resignation rule. See Appendix D, pages 20-23.

Source: Clerk of the Supreme Court of Florida

Background Information – Member Commentary / Committee Action:

- Clerk of the Florida Supreme Court recommended amendments.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 3-0 on September 22, 2008.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.
- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.
- On December 12, 2008 Board of Governors meeting agenda for first reading.
- Disciplinary Procedure Committee made further edits regarding the timing of service of referee's report; Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on December 11, 2008; the 2 amendments were merged and returned to the committees and Board of Governors for 1st reading; Disciplinary Procedure Committee staff liaison referred back to Disciplinary Procedure Committee for further review January 2009 due to pending amendments on companion rule 3-7.9; Disciplinary Procedure Committee approved by vote of 6-0 on January 29, 2009, to include language in rule 3-7.9 allowing a respondent to enter into a disbarment on consent without admitting guilt; rule 3-7.9 referred back to Program Evaluation Committee for strategic plan review.
- Rule 3-7.9 and all companion rules were on April 2009 Board of Governors meeting agenda for a new first reading.

Board Action: Board of Governors favorably reported on consent at May 29, 2009 meeting.

Rule 3-7.9 Consent Judgment

Explanation: In connection with proposed amendments to rules 3-5.1, 3-6.1, 3-7.7, and new rule 3-7.12 within this petition, new subdivision (e), moves language

regarding disbarment on consent from subdivision (j) of rule 3-5.1. It also adds the option of a disbarment on consent without admission of guilt by the respondent to the bar's charges.

Reasons: Rule 3-7.9 deals with consent judgments generally; since Disbarment on Consent is not a type of discipline, but rather a vehicle designed to achieve disbarment, it is more appropriately placed in the consent judgment rule. Allowing Disbarment on Consent with the option of the respondent not specifically admitting or denying guilt to the charges allows another option for the bar in dealing with serious misconduct of its members. See Appendix D, pages 20-23.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee reviewed on July 24, 2008; Disciplinary Procedure Committee favorably reported substantive review by voice vote of 3-0 on September 22, 2008.

- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

- On December 12, 2008 Board of Governors meeting agenda for first reading.

- Disciplinary Procedure Committee staff liaison referred back to Disciplinary Procedure Committee for further review January 2009.

- Disciplinary Procedure Committee favorably reported by vote of 6-0 on January 29, 2009, to include language allowing a respondent to enter into a disbarment on consent without admitting guilt.

- On April Board of Governors meeting agenda for first reading.

- Rules Committee favorably reported by voice vote of 4-0 on March 9, 2009 conference call.

Disciplinary Procedure Committee referred back to Program Evaluation Committee for strategic plan review and returned to Board of Governors on April meeting agenda for first reading.

- Program Evaluation Committee favorably reported strategic plan review on April 3, 2009.

Board Action: Board of Governors favorably reported by voice vote on May 29, 2009.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: Within subdivision (a), clarifies that this rule applies to attorneys who have been suspended for 91 or more days and extends the exception for applicability beyond membership fees to all types of delinquency; within subdivision (f), adds new subdivision (4) to include educational requirements as a factor for the referee to consider when determining fitness of the applicant for reinstatement or readmission; also within subdivision (f)(1), adds new subdivision (N) and renumbers subsequent subdivisions accordingly, to require that a felony suspended lawyer submit proof that the affected lawyer's civil rights have been restored before the lawyer may be reinstated as a member in good standing.

Reasons: The Clerk of this Court, by letter dated September 18, 2008 (attached as Appendix D, p. 17-19) informed the bar of this Court's concerns that bar members who have been ineligible to practice for three years or more due to disciplinary suspensions will not be competent to practice upon reinstatement to good standing and eligibility to practice. This Court has concerns that ineligible members will not remain abreast of developments in the law or maintain their legal skills during their suspension. While the longest court-ordered disciplinary suspension is for 3 years, all members who are suspended 91 days or more must seek reinstatement before they are eligible to practice again. Many suspended members wait months or even years after their original court-ordered suspension period has ended before seeking reinstatement. For example, a bar member with a court-ordered 91-day suspension may wait over 3 years to apply for reinstatement while a bar member with a 3-year suspension may wait 6 years or more to apply for reinstatement. Such lengthy periods of ineligibility to practice are the source of this Court's concern about the competency of reinstated lawyers.

The proposed amendments address this Court's concerns by adding educational and testing requirements for certain suspended bar members before they can become members of the bar in good standing again and therefore eligible to practice. The proposed amendments seek to ensure that reinstated members will be competent to practice law when they become members in good standing and eligible to practice again.

The proposed amendments to new subdivision (N) address a problem that has been occurring with increasing frequency, in which a lawyer will seek reinstatement, but will not have taken the steps to have his or her civil rights restored before seeking reinstatement and eligibility to practice again. See Appendix D, pages 17-21.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Subdivisions (a) and (f)(4) were presented to Disciplinary Procedure Committee for initial consideration on April 2, 2009. Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on April 2, 2009.
- Disciplinary Procedure Committee favorably reported non-substantive changes suggested by Rules Committee staff by voice vote of 6-0 on May 28, 2009.
- On May 29, 2009 Board of Governors meeting agenda for first reading.
- Subdivision (f)(1) was presented to and approved by Disciplinary Procedure Committee on May 28, 2009.
- Rules Committee favorably reported staff recommendation to move language from subdivision (f)(4) to (f)(3); Rules Committee favorably reported procedural review of amendments by voice vote of 5-0 on July 1, 2009 conference call.
- Budget Committee favorably reported fiscal review by ballot vote of 6-0 on July 2, 2009.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on July 16, 2009.

On July 17, 2009 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors approved on September 25, 2009.

Rule 3-7.12 Disciplinary Revocation

Explanation: Proposed new rule 3-7.12, in connection with proposed amendments to rules 3-5.1, 3-6.1, 3-7.7, and 3-7.9 within this petition, sets forth procedures for a bar member to petition for voluntary revocation of the member's license through a procedure similar to what was formerly termed disciplinary resignation. The new procedure, known as disciplinary revocation, allows disciplinary revocation for a minimum of five years with the option of disciplinary revocation without leave to apply for re-admission. All such disciplinary revocations would require specific approval of the bar's Board of Governors and are the functional equivalent of disbarment.

Reasons: This rule would allow efficient disposition of cases involving lawyers who have perpetrated serious offenses who will not or cannot plead guilty to violating bar rules due to exposure to criminal prosecution, but are willing to cease practicing under a disciplinary revocation rule that would not require admission of guilt. The bar would otherwise have to go through long investigations, hearings and appeals, in which the respondents might not be found guilty. Such disciplinary revocation is by definition in rule 3-7.12, Rules

Regulating The Florida Bar, "the functional equivalent of disbarment." See Appendix D, pages 20-23.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action: A prior disciplinary resignation rule, also numbered 3-7.12, was eliminated in 2005, in *In re Amendments to Rules Regulating The Florida Bar*, 918 So.2d 655 (Fla. 2005), over concerns about public confusion regarding the terms of such discipline. The new rule makes clear that Board of Governors approval is required for all disciplinary revocations and the new nomenclature should help the public understand the differences between the new rule and the old disciplinary resignation rule. Also, new rule 3-7.12 states that disciplinary revocation is "the functional equivalent of disbarment." Any concerns regarding public perception may be dealt with by press releases and news articles making clear the benefits of disciplinary revocation in efficiently and quickly removing problem lawyers from bar's membership.

- Disciplinary Procedure Committee favorably reported by vote of 6-1 on July 11, 2008 but directed staff to make further changes in wording and re-numbering before final approval of the proposed rule. The item was deferred on July 24, 2008 due to lack of time. Disciplinary Procedure Committee considered refinements to the proposed rule on September 22, 2008, adding Florida Supreme Court cases relating to the rule as part of the comment.

- Disciplinary Procedure Committee favorably reported by voice vote of 3-0 on September 22, 2008.

- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

- On December 12, 2008 Board of Governors meeting agenda for first reading.

- Disciplinary Procedure Committee staff liaison referred back to Disciplinary Procedure Committee for further review January 2009 due to pending amendments on companion rule 3-7.9; Disciplinary Procedure Committee approved by vote of 6-0 on January 29, 2009, to include language in rule 3-7.9 allowing a respondent to enter into a disbarment on consent without admitting guilt; rule 3-7.9 referred back to Program Evaluation Committee for strategic plan review and returned to Board of Governors on April meeting agenda for first reading.

Board Action: Board of Governors favorably reported by voice vote on May 29, 2009.

Rule 3-7.13 Incapacity Not Related to Misconduct

Explanation: In connection with proposed amendments to rule 3-5.2 in this petition, within subdivision (c), provides an interim process using the procedures of emergency suspension and interim probation when exigent circumstances reveal that an attorney lacks the capacity to practice law but has not engaged in misconduct that is normally required to start a disciplinary proceeding.

Reasons: Currently, if a lawyer contests placement on the inactive list due to incapacity, rule 3-7.13 requires a finding of probable cause, a referee proceeding and an order by this Court before that lawyer can be placed on the inactive list due to incapacity. This process is lengthy and does not protect the public from this lawyer during the pendency of the matter. In a recent case, the bar received information from a member of the Judiciary that a bar member was acting strangely. The bar petitioned for emergency probation in *The Florida Bar v. Oxendine, SC06-2244*, requesting a psychological evaluation. This Court granted the petition in December, 2006 and the ensuing evaluation revealed that the respondent was delusional and not competent to practice law. The bar moved for the respondent to be placed on the inactive list due to incapacity, and this Court denied the motion and required compliance with the procedure in rule 3-7.13. After a grievance committee found probable cause, a petition for placement on the inactive list due to incapacity was filed in *The Florida Bar v. Oxendine, SC07-59*. After a referee recommended that the respondent be placed on the inactive list, this Court ordered placement on the inactive list in May, 2008. This rule amendment would allow for expedited placement on the inactive list due to incapacity and for a referee to conduct a hearing and then make findings of fact and a recommendation to this Court as to whether the interim placement on the inactive list should or should not be sustained. See Appendix D, pages 22-23.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on July 11 & July 24, 2008. Disciplinary Procedure Committee favorably reported by voice vote of 4-0 on July 24, 2008.

- On October 3, 2008 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by fax/e-mail vote of 9-0 on November 12, 2008.

- Rules Committee favorably reported procedural review by voice vote of 6-0 on November 17, 2008 conference call.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

Board Action: Board of Governors favorably reported by consent on December 12, 2008.

Rule 4-1.5 Fees and Costs

Explanation: This is the first of two different proposals for amendment of this rule. This amendment creates new subdivision (E) to subdivision (f)(4) and commentary indicating that the lawyer in a personal injury or wrongful death case charging a contingent fee must include in the fee contract information about the scope of the lawyer's representation relating to subrogation and lien resolution services, that the lawyer shall not charge any additional fee to the client for providing such services if all fees for the personal injury matter plus lien resolution exceed the contingent fee schedule, that extraordinary services for subrogation and lien resolution may be referred to another only with the client's informed consent, that additional fees by the other lawyer must comply with all provisions of the fee rule, and that the lawyer providing the extraordinary subrogation and lien resolution services may not divide fees with the lawyer handling the personal injury or wrongful death claim. Commentary further explains what lien resolution services are required as part of the original fee contract and what extraordinary services entail. Adds commentary that other ancillary services such as estate planning, bankruptcy, financial planning, public benefit planning, tax planning, real estate transactions, and medicare set-asides are not considered part of the representation as part of the original contingent fee contract in a personal injury or wrongful death case, but that the lawyer should clearly indicate in the contract whether the lawyer intends to provide such ancillary services as part of the representation. See Appendix D, pages 24-33.

Reasons: This rule amendment arises out of a request for a written ethics opinion on the issue. A written staff opinion was requested regarding the ethical propriety of performing medical lien negotiation work under a reverse contingent fee agreement. Florida Bar Staff Opinion 28724 concluded that it would likely result in an excessive fee because personal injury lawyers normally negotiate liens as part of the service they provide in a contingent fee case, so charging an additional contingent fee for the purpose of negotiating medical liens would exceed the contingent fee schedule. On May 1, 2009, the attorney requested Professional

Ethics Committee review of the staff opinion. The Professional Ethics Committee revised the staff opinion at its meeting of June 26, 2009, by replacing the phrase “is usually required to attempt to negotiate” with the phrase “customarily attempts to negotiate.” The attorney subsequently requested Board of Governors review.

On December 11, 2009, the Board of Governors voted to defer the matter and refer it back to the Board Review Committee on Professional Ethics to consider an amendment to the Rules Regulating The Florida Bar addressing the subject. President Diner and President-elect Mayanne Downs jointly appointed the Special Committee on Medical Lien Resolution in February 2010 with the charge of studying the issue of outsourcing medical lien resolution services in personal injury cases to make recommendations to the Board of Governors on how best to provide guidance to lawyers on this issue, including amendments to the Rules Regulating The Florida Bar that may be necessary to address this issue.

The special committee determined that some aspects of lien resolution, particularly involving ERISA and medicare, have become so complex, they may require the services of a lawyer who devotes a substantial part of his or her practice to resolving those liens. The more complex liens sometimes involve additional litigation and knowledge of federal as well as state law involving liens.

The special committee determined that, although in the past lawyers customarily negotiated liens as part of the lawyer's services in the personal injury case, lawyers should not be required to resolve more complex and difficult liens as part of the original contingent fee contract in a personal injury case. The amendments require the lawyer's initial personal injury contract to indicate whether the lawyer will resolve liens as part of that contract. The amendments are intended to encourage lawyers to resolve liens that can be negotiated by the original lawyer handling the personal injury case. However, the amendments allow the lawyer in the personal injury matter to either refer the extraordinary lien resolution services to another lawyer or to hire another lawyer to handle the extraordinary lien resolution services on behalf of the client with the client's informed consent.

The amendments do not permit the original lawyer to divide fees with the lawyer handling the lien resolution as a "referral" fee. The contract of the lawyer handling the extraordinary lien resolution services must separately comply with all requirements of rule 4-1.5.

While studying the rule, the special committee also determined it was appropriate to note in the commentary that personal injury lawyers may determine that there are other ancillary legal services the personal injury client may benefit from such as estate planning, bankruptcy, etc., and that the commentary should be

amended to note that the lawyer's personal injury contract should clearly indicate whether the lawyer will provide those services as part of the representation.

Source: Special Committee on Medical Lien Resolution

Background Information – Member Commentary / Committee Action:

- Approved by Special Committee on Medical Lien Resolution by voice vote 8-0 on May 24, 2010.

- On May 28, 2010 Board of Governors meeting agenda for first reading.

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on June 23, 2010.

- Rules Committee favorably reported substantive and procedural review, after motion was made and accepted to include additional language providing that the lawyer handling the extraordinary subrogation and lien resolution services may not divide fees with the lawyer handling the personal injury or wrongful death claim, by voice vote of 3-0 and ballot vote of 1-0 on July 1, 2010.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on July 22, 2010;

Board Action: Board of Governors approved waiver of 2nd reading and favorably reported the amendment at the July 23, 2010 Board of Governors meeting.

Rule 4-1.5 Fees and Costs for Legal Services

Explanation: This is the second of two different proposals for amendment of this rule. Within the comment to rule 4-1.5, adds that lawyers may have statutory restrictions on fees, including in areas such as workers compensation.

Reasons: The Clerk of this Court, by letter dated May 28, 2009, attached in Appendix D pages 34-49, informed the bar of changes to statutes impacting various rules. The letter noted that HB903CS regarding workers compensation attorney's fees may impact rule 4-1.5, which might benefit by adding commentary referencing revised factors for awarding attorney's fees in workers compensation cases. The bar recommends adopting very general commentary indicating that lawyers should be aware of any restrictions or factors imposed by statute. The bar recommends only general language because statutes are subject to change more quickly than amendments to the Rules Regulating The Florida Bar, and such references likely would become outdated quickly.

Source: Clerk of the Supreme Court of Florida

Background Information – Member Commentary / Committee Action:

- Clerk of the Supreme Court of Florida requested amendments.

- Rules Committee favorably reported by voice vote of 5-0, after suggested edits were approved, on July 1, 2009.
- On July 17, 2009 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on August 26, 2009.
- Program Evaluation Committee favorably reported strategic plan review on September 24, 2009; withdrawn from Board of Governors consent agenda at the request of Jake Schickel on behalf of the Workers' Compensation Section on September 25, 2009.

Board Action: Board of Governors approved on consent calendar by voice vote on December 11, 2009.

Rule 4-5.5 Unlicensed Practice of Law; Multijurisdictional Practice of Law

Explanation: In connection with proposed new rule 1-3.12 in this petition, within subdivisions (c) & (d), adds "or" at the end of each listed instance of authorized temporary practice in Florida, to clarify that a lawyer admitted to practice in a non-Florida jurisdiction need only meet 1 such criterion to be authorized to temporarily practice in Florida; in connection with separate proposed amendments for new rule 1-3.12, within subdivision (c) and commentary, adds language that allows a lawyer admitted to practice in another U.S. jurisdiction to engage in activities authorized by rule 1-3.12 after a determination of a major disaster by the appropriate court.

Reasons: Following hurricanes Rita and Katrina, the judicial systems in Alabama, Mississippi, and Louisiana were substantially damaged or crippled. In order to provide adequate representation for those in need, the American Bar Association proposed a model court rule that would relax practice restrictions on attorneys whose home state sustained a disaster and who were not admitted in a particular jurisdiction, to allow limited practice in that other jurisdiction. This proposal is consistent with that concept. See Appendix D, pages 4-14.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported referral to Unlicensed Practice of Law Committee by voice vote of 8-0 on December 13, 2007 conference call;
- Unlicensed Practice of Law Committee favorably reported substantive review by unanimous voice vote on January 18, 2008.

- Disciplinary Procedure Committee favorably reported substantive review by unanimous voice vote of 6-0 on February 28, 2008.
- Budget Committee withdrew from March 28, 2008 Board of Governors agenda pending further review; Budget Committee favorably reported fiscal review by ballot vote of 7-0 on May 6, 2008.
- Program Evaluation Committee favorably reported substantive review by voice vote of 5-1 and strategic plan review by voice vote of 7-0 on May 29, 2008.
- On May 30, 2008 Board of Governors meeting agenda for first reading.
- Rules Committee favorably reported procedural review by voice vote of 5-0 on July 24, 2008.

Board Action: Board of Governors approved on July 25, 2008.

SUBCHAPTER 4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 4-8.3 Reporting Professional Misconduct

Explanation: In connection with proposed amendments to rule 4-1.12 and rule 4-2.4 in the Biannual Filing 2010 Housekeeping, within new subdivision (c)(2) and the comment, adds an exception to the requirement that lawyers report professional misconduct of other lawyers for lawyers who serve as mediators or mediation participants if the information is privileged or confidential under applicable law. Within subdivision (c), amendments organize the subdivision into separate subdivisions and make grammatical changes not intended to change the substance of the rule, other than new subdivision (c)(2) as discussed above.

Reasons: The amendments clarify that lawyers who are court-appointed mediators are governed by the applicable law and rules relating to certified and court-appointed mediators. Amendments to rules 4-1.12, 4-2.4, and 4-8.3 address issues relating to lawyers who are court-appointed and certified mediators. Rule 4-8.3 requires that lawyers report misconduct of other lawyers. Bar member Brian Spector requested that the bar consider amendments to its rules, because the reporting requirements of Rule 4-8.3 may conflict with the law and rules regulating certified and court-appointed mediators. Mr. Spector therefore proposed an amendment which would exempt lawyers acting as arbitrators and mediators from the reporting requirement of Rule 4-8.3. The Professional Ethics Committee reviewed the matter, conferred with the Mediator Ethics Advisory Committee, and recommended that the rules be amended to exempt mediators from the reporting requirement where the information to be reported is privileged or confidential under applicable law. The Professional Ethics Committee recommended this change to

avoid any conflict between a mediator's duties under rules and law as a mediator not to disclose information, and a lawyer's affirmative duty to report professional misconduct.

Source: Professional Ethics Committee

Background Information – Member Commentary / Committee Action:

- Professional Ethics Committee recommended by voice vote without objection on June 26, 2009.
- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on August 25, 2009 conference call.
- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on August 26, 2009.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 5-0 on September 24, 2009.
- On September 25, 2009 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent on December 11, 2009.

Rule 5-1.2 Trust Accounting Records and Procedures

Explanation: This is the first of two different proposals for amendment of this rule. Within subdivision (e)(7), allows the chair or vice chair of a grievance committee to request an audit of a bar member's trust account records.

Reasons: The current subsection 5-1.2(e)(7) provides that the audit request may be made by a grievance committee. The change allows a grievance committee to act more expeditiously through its chair or vice chair when necessary to protect client funds, without the necessity of waiting for a full committee vote. This procedure would avoid delay which could jeopardize client or third party funds. It also follows other bar rules which allow grievance committee subpoenas to be issued on the signature of the grievance committee chair alone.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 6-0 on May 28, 2009.
- Rules Committee favorably reported procedural review by voice vote of 5-0 on July 1, 2009 conference call.
- Budget Committee favorably reported fiscal review by ballot vote of 6-0 on July 2, 2009.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on July 16, 2009.

- On July 17, 2009 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent agenda on September 25, 2009.

Rule 5-1.2 Trust Accounting Records and Procedure

Explanation: This is the second of two different proposals for amendment of this rule. Within subdivision (a), defines the terms “lawyer” and “law firm” when used within this rule. Within subdivision (b), reorganizes to conform to style guide and for internal consistency. Within subdivision (b)(3), adds that the client or case must be identified in all disbursements to the information that must be indicated on originals or copies of cancelled checks. Within subdivision (b)(4) adds that documentary support for electronic transfers must contain the name of the authorizer, name of recipient, confirmation from the banking institution, and date and time the transfer was completed. Within new subdivision (d), provides that lawyers shall not sign blank trust account checks or use a signature stamp as a signature; further provides that non-lawyers are not permitted to sign trust account checks; redesignates subsequent subdivision entries as necessary; within new subdivision (e) sets forth requirements for documenting wire transfers of trust account funds; within subdivisions (a) and (f), changes the word "attorney" to "lawyer" to maintain consistency. See Appendix D, pages 50-58.

Reasons: The amendment to subsection (a) changes "attorney" to lawyer for consistency and defines the terms "lawyer" and "law firm" so that the use of these words within this rule are understood.

The amendment to subsection (b) allows for the bar's auditors to more easily track the transactions from a lawyer's trust account.

The amendments to subdivision (d) will protect the public and lawyers from costly mistakes and misappropriation of trust funds caused by carelessness with signing blank trust account checks and losses due to improper actions by non-lawyers who have in the past been able to sign trust account checks with the approval of a lawyer. Additional non-substantive edits are proposed to conform to the style guide and for consistency in referencing a lawyer.

Currently rule 5-1.2 contains no provision for electronic wire transfers and the amendment to subsection (e) allows lawyers to utilize this digital method of receipt and disbursement of trust account funds to conform to the current practice.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- The proposed rule change was before the Disciplinary Procedure Committee for the first time on September 24, 2009. Disciplinary Procedure Committee approved the initial proposed changes to subdivision (d) by voice vote of 7-1 with instructions to staff to make further clarifying changes for review at the December 10, 2009 Disciplinary Procedure Committee meeting.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on November 17, 2009.

- Disciplinary Procedure Committee favorably reported proposed changes, with clarification of final sentence of subdivision (d), by voice vote of 4-0 on January 28, 2010.

- Rules Committee favorably reported by ballot vote of 7-0 on February 25, 2010.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 25, 2010.

- On March 26 Board of Governors meeting agenda for first reading.

Dissent: During the rules development process prior to adoption of the proposals by the Board of Governors and prior to the official notice of intent to file this petition, four bar members sent written comments to the bar indicating their disagreement with the bar's proposal to prohibit the use of nonlawyer signatories on a trust account in rule 5-1.2, stating that the provision will create a hardship for sole practitioners. These comments were provided to the Board of Governors prior to their vote approving the amendments, notwithstanding these comments. These comments can be found at Appendix D, pages 52-58.

Board Action: Board of Governors favorably reported with dissent by voice vote on May 28, 2010.

Rule 6-3.2 Certification Committees

Explanation: Divides current rule into two subdivisions and adds titles; subdivision (a) establishes and provides criteria for initial certification committee appointments and membership terms; new subdivision (b) proposes an alternative membership range of 5 to 15 members for established committees and provides for staggered terms.

Reasons: The purpose of the proposed amendment is to allow the Board of Legal Specialization and Education (BLSE) to recommend a membership adjustment for established committees to address the actual needs of the committee. For example, if it is determined that two areas of certification can be managed by a

single committee, the membership may need to be increased to allow for representatives from both areas. Or, if it is determined that an area of certification can be managed by a lesser number of members than 9, the committee size may be reduced.

Source: Board of Legal Specialization and Education

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education considered and approved by voice vote of 9-0 on January 22, 2010. The committee membership range in subsection (b) was approved for 5 to 13 members. Discussion involving merger proposal for Business Litigation and Antitrust and Trade Regulation prompted reconsideration by BLSE of up to 15 members. BLSE reconsidered and approved 5 to 15 member range by voice vote of 13-0 on April 30, 2010.

- Program Evaluation Committee favorably reported amendments by voice vote of 8-0 on May 28, 2010 after adding the words "and the approval of The Florida Bar Board of Governors."

- On May 28, 2010 Board of Governors agenda for first reading.

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on June 23, 2010.

- Rules Committee favorably reported procedural review, after a proposed change ("less" to "fewer") was accepted, by voice vote of 3-0 and ballot vote of 1-0 on July 1, 2010.

Board Action: Board of Governors favorably reported by unanimous vote on July 23, 2010.

Rule 6-3.6 Recertification, Minimum Standards for Proficiency

Explanation: Within subdivision (b)(2), restates the minimum continuing legal education requirement as 50 credit hours over the 5-year certification period, rather than 10 hours each year during the 5-year certification period.

Reasons: This change is consistent with current practice and allows the required 50 hours to be obtained in a time frame best suited to the member.

Source: Board of Legal Specialization and Education

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education reviewed and approved by vote of 13-0 on March 7, 2008.

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

- Program Evaluation Committee favorably reported substantive and strategic plan review by voice vote of 7-0 on May 29, 2008.
- Rules Committee favorably reported procedural review by voice vote of 7-0 on September 4, 2008 conference call.

Board Action: Board of Governors approved on October 3, 2008.

Rule 6-3.8 Board Certified Judicial Fellow

Rule 6-3.86-3.9 Revocation of Certification [renumbered]

Rule 6-3.96-3.10 Manner of Certification [renumbered]

Rule 6-3.106-3.11 Right of Appeal [renumbered]

Rule 6-3.116-3.12 Fees [renumbered]

Rule 6-3.126-3.13 Confidentiality [renumbered]

Rule 6-3.136-3.14 Amendments [renumbered]

Explanation:

New 6-3.8, Board Certified Judicial Fellow

Proposed new Rule 6-3.8 to establish a new status of "board certified judicial fellow" for bar members that are appointed as judicial officers while board certified.

Within subdivision (a), identifies the reason the new board certification status is created, which is to preserve and distinguish the achievement of board certification.

Within subdivision (b), provides a definition for the term judicial officer.

Within subdivision (c), indicates that the board certified judicial fellow status is automatic for any Florida bar board certified member that becomes a judicial officer; the member need not apply and request the status.

Within subdivision (d), indicates that the board certified judicial fellow must remain a member in good standing with the bar, if required to hold the judicial office, to retain the certification status and that board certified judicial fellow status will continue through the term of judicial service.

Within subdivision (e), indicates that a member may identify his or her certification status to the public, but must state the area of law practice in conjunction with "board certified judicial fellow."

Within subdivision (f), explains that if a member is no longer a judicial officer and resumes his or her status as a lawyer, the member may reapply for board certification or recertification pursuant to the area standards.

Within subdivision (g), indicates that the current procedures for revoking board certification will also be the procedures for revoking board certified judicial fellow status.

Within subdivision (h), explains that upon the effective date of the new rule and for two years following, any member who became a judicial officer while board certified and relinquished such certification may request a board certified judicial fellow status.

Within subdivision (i), indicates that a board certified judicial fellow is subject to an annual fee no greater than one third of the annual fee for board certification.

Rules 6-3.8 through 6-3.13

Renumbered accordingly.

Old 6-3.11 and New 6-3.12, Fees

Rule 6-3.11 renumbered to 6-3.12 and added new subdivision (h) to include the judicial fellow annual fee in the listing of certification fees (actual amount of the fee is identified in BLSE Policy 2.04); subdivisions relettered accordingly.

Reasons: Currently certified members who become judicial officers may or may not be able to retain certification. With a board certified judicial fellow status, all judges will be similarly classified and retained as certified members, subject to a lower annual fee and no particular requirements to maintain such status aside from their judicial office and membership in good standing in the bar. Certified lawyers who become judges want to retain their board certification. While area standards for civil trial may accept judicial experience to qualify for recertification, area standards for real estate, for example, do not. This classification will equalize the status of all certified members who become judges and will offer them a means by which to retain a connection to the program, along with reducing their annual fee, which has proven to be a hindrance to many and has caused some to relinquish their certification.

Source: Board of Legal Specialization and Education

Background Information – Member Commentary / Committee Action:

- Board of Legal Specialization and Education tabled consideration on September 11, 2009; Board of Legal Specialization and Education considered and approved by voice vote of 13-0 on November 6, 2009; Board of Legal Specialization and Education; Rules and Policies Subcommittee considered edits to amendments and approved on December 10, 2009 and January 6, 2010; Board of Legal Specialization and Education considered and approved by email vote of 14-0 on January 7, 2010.

- Program Evaluation Committee favorably reported substantive and strategic plan review by voice vote of 8-0 on January 28, 2010.

- Rules Committee favorably reported by ballot vote of 7-0 on February 25, 2010.

- Budget Committee favorably reported fiscal review by ballot vote of 5-0 on March 5, 2010.

- On March 26, 2010 Board of Governors meeting agenda for first reading.
Board Action: Board of Governors favorably reported by unanimous vote on May 28, 2010.

Rule 10-2.1 Generally

Explanation: Moves subdivision (a)(1) of rule 10-2.1 to subdivisions (a) and (c) of new rule 10-2.2; moves subdivision (a)(2) to subdivision (b); moves subdivision (a)(3) to subdivision (c); makes minor editorial changes throughout.

Reasons: Some of the language in the definitional section of the current rule is not definitional. The amendment rearranges the rule to move the non-definitional language to new rule 10-2.2. For clarification and guidance, language prohibiting a person from using certain titles if they do not meet the definition of paralegal or legal assistant was moved from subdivision (a)(2) to subdivision (b) and language prohibiting a non-Florida lawyer from advertising legal services in Florida was moved from subdivision (a)(3) to subdivision (c). The language comes from case law.

Source: Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Standing Committee on the Unlicensed Practice of Law favorably reported by vote of 22-0 on September 9, 2009.

- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on November 16, 2009.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on November 17, 2009.

- Program Evaluation Committee favorably reported strategic plan review on December 10, 2009.

- On Board of Governors meeting agenda for first reading on December 11, 2009.

Board Action: Board of Governors favorably reported on consent on January 29, 2010.

Rule 10-2.2 Form Completion by a Nonlawyer

Explanation: Creates new rule to clarify and define the unlicensed practice of law when a nonlawyer is assisting with completion of forms; subdivision (a) contains language moved from subdivision (a)(1) of rule 10-2.1 to define what a

nonlawyer is allowed to do when assisting with completion of a Supreme Court Approved Form and further clarify that a nonlawyer cannot give legal advice; subdivision (b) codifies case law explaining what a nonlawyer can and cannot do when completing a form which has not been approved by this Court; subdivision (c) contains language moved from subdivision (a)(1)(A) –(C) of rule 10-2.1 to define language that must be on each form or included in the disclosure statement.

Reasons: New rule 10-2.2 created to move the non-definitional language from rule 10-2.1. Some of the language in the definitional section of the current rule is not definitional. The amendment rearranges the rule to move the non-definitional language to new rule 10-2.2. For clarification and guidance, language is added regarding what a nonlawyer can and cannot do when assisting in the completion of a form not approved by this Court. The language comes from case law. Also, some language moved from rule 10-2.1 specifies what information must be contained within the form.

Source: Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Standing Committee on the Unlicensed Practice of Law favorably reported by vote of 22-0 on September 9, 2009.

- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on November 16, 2009.

- Budget Committee favorably reported fiscal review by ballot vote of 8-0 on November 17, 2009.

- Program Evaluation Committee favorably reported strategic plan review on December 10, 2009.

- On Board of Governors meeting agenda for first reading on December 11, 2009.

Board Action: Board of Governors favorably reported on consent on January 29, 2010.

Rule 14-1.2 Jurisdiction

Explanation: Within subdivision (a), adds requirement that written contracts comply with rule 4-1.5(i) and limits fee arbitration cases to matters in which the only bona fide disputed issue is the entitlement to or amount of a legal fee, the amount of the legal fee in dispute does not exceed \$100,000, and the time necessary for the arbitration does not exceed one 8-hour day.

Reasons: The current rule provides jurisdiction for fee arbitration claims between lawyers who are members of the bar or between members of the bar and

their clients. The current rule authorizes discretion to decline jurisdiction based upon the complexity or length of time necessary to conduct the arbitration. This proposed amendment clarifies the exact limits of the bar's jurisdiction in fee arbitration cases and avoids problems with crossclaims and counterclaims that were causing the fee arbitration program to be used to resolve disputes that it was never intended to address. The proposal also limits the time devoted to fee arbitrations, which greatly assists the volunteer arbitrators who donate their time to assist the bar with this program. See Appendix D, page 59.

Source: Florida Bar Staff (ACAP/Fee Arbitration)

Background Information – Member Commentary / Committee Action:

- Proposal to Disciplinary Procedure Committee on July 11, 2008.
- Disciplinary Procedure Committee favorably reported substantive review by voice vote of 4-0 on July 24, 2008.
- On October 3, 2008 Board of Governors meeting agenda for first reading.
- Budget Committee favorably reported fiscal review by e-mail/fax vote of 9-0 on November 12, 2008.
- Rules Committee favorably reported by voice vote of 6-0 on November 17, 2008 conference call.
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on December 11, 2008.

Board Action: Board of Governors favorably reported by consent on December 12, 2008.

Rule 14-6.1 Binding Nature; Enforcement; and Effect of Failure to Pay Award

Explanation: Within subdivision (c), changes "90 days" to "30 days" as the time period after a fee arbitration award becomes final and the bar member fails to pay the award that the bar member will be delinquent.

Reasons: The amendment makes rule 14-6.1(c) consistent with rule 1-3.6(f).

Source: Florida Bar Staff (ACAP – Attorney Client Assistance Program)

Background Information – Member Commentary / Committee Action:

- Proposed by bar staff (ACAP).
- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on June 23, 2010.
- Rules Committee favorably reported substantive and procedural review by voice vote of 3-0 and ballot vote of 1-0 on July 1, 2010.

- PEC favorably reported strategic plan review by voice vote of 8-0 on July 22, 2010.

Board Action: Board of Governors approved waiver of 2nd reading and favorably reported the amendment at the July 23, 2010 Board of Governors meeting.

Rule 20-2.1 Generally

Explanation: Within subdivision (d), clarifies that membership in the American Association for Paralegal Education shows substantial compliance in relation to the definition of approved paralegal program.

Reasons: The amendments clarify the type of paralegal program that is approved.

Source: Florida Registered Paralegal Program Committee

Background Information – Member Commentary / Committee Action:

- Approved by the Florida Registered Paralegal Program committee by a vote of 7 - 0 on September, 10, 2009.

- Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on November 16, 2009.

- Program Evaluation Committee favorably reported strategic plan review on December 10, 2009.

- On Board of Governors meeting agenda for first reading on December 11, 2009 .

- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on January 11, 2010.

Board Action: Board of Governors favorably reported on consent on January 29, 2010.

Rule 20-4.1 Generally

Explanation: Within subdivisions (d) and (e), specifies that if there is an open unlicensed practice of law complaint or investigation against an applicant at the time of application or renewal, the application or renewal will be held as pending until the matter is resolved.

Reasons: The rule provides that someone who has been found to have engaged in the unlicensed practice of law is ineligible to register as a Florida Registered Paralegal. If there is a complaint or investigation pending, the application is held to avoid approving an applicant who may later become ineligible because of a finding that the applicant has engaged in the unlicensed practice of law.

Source: Florida Registered Paralegal Program Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by vote of 6-0 on September 12, 2008.

- Rules Committee favorably reported by voice vote of 6-0 on March 9, 2009 conference call; also recommended that the proposal be returned to the Florida Registered Paralegal Committee to consider whether or not to include licensed attorneys or other licensed individuals pending investigation in other states.

- Budget Committee favorably reported by e-mail vote of 6-0 on March 13, 2009.

- Program Evaluation Committee favorably reported strategic plan review on April 2, 2009.

- On April 3, 2009 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent at May 29, 2009 meeting.

Rule 20-5.1 Generally

Explanation: Within subdivision (c), specifies that a finding of unlicensed practice of law within the last 7 years will preclude registration and adds new subdivision (g), to clarify that an applicant who is providing services directly to the public is ineligible for registration.

Reasons: The amendments clarify and codify eligibility requirements. The rule currently prevents an applicant found to have engaged in the unlicensed practice of law from being eligible for registration or renewal. The amendment puts a time limitation on the finding. If the finding of UPL was within the last 7 years, the applicant is ineligible. Without the 7 year period, the limitation is too restrictive. The amendment to (g) is to protect the public from the unlicensed practice of law.

Source: Florida Registered Paralegal Program Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by vote of 6-0 on January 14, 2009.

- Rules Committee, after a minor non-substantive edit was made at the suggestion of Rules Committee member Scott McMillen, favorably reported by voice vote of 6-0 on March 9, 2009 conference call.

- Budget Committee favorably reported by e-mail vote of 6-0 on March 13, 2009.

- Program Evaluation Committee favorably reported strategic plan review on April 2, 2009.
- On April 3, 2009 Board of Governors meeting agenda for first reading.
Board Action: Board of Governors favorably reported on consent at May 29, 2009 meeting.

V. Official Notice of Amendments

7. 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 September 1, 2010 issue of the 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/53A08DA3B3410C3F852577850066E462>.

VI. Discrepancy with West's Florida Rules of Court 2010

8. During the preparation of this petition, the bar noted a discrepancy between the Rules Regulating The Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published in *West's Florida Rules of Court 2010*. West's omitted the entire subdivision (g)(5) of rule 3-7.10 in its 2010 publication of the rules. That subdivision was adopted by this Court in the case *In re Amendments to the Rules Regulating The Florida Bar*, 916 So.2d 655 (Fla. 2005), case number SC05-206. The bar contacted West's, which has indicated that the error will be corrected.

VII Editorial Corrections and Request for Waiver of Rules Procedures

9. During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors, but were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006. Most of these editorial errors were corrected in the publication online. They are each noted in the second column of Appendix C.

10. Also during the preparation of this petition, the bar detected the following two editorial flaws within the existing text of a rule in which other amendments are proposed.

(a) The word “attorney” is used within the title of subchapter 3-6, throughout rule 3-6.1 and rule 3-7.10. For consistency through the Rules Regulating The Florida Bar and compliance with this Court’s style guide, the word “attorney” is being replaced with the word “lawyer” in rules as they are amended. This non-substantive edit has been approved conceptually by the Board of Governors in the rule-making process, but was not formally approved by the Board of Governors before approval of other amendments to this subchapter and rule. The amendments were noticed in both the print and the online version of the bar *News*, except in the title of subchapter 3-6. The change from “attorney” to “lawyer” in the title of subchapter 3-6 was noticed only in the on-line version of the bar *News*.

(b) Within subdivision (b)(3) of rule 5-1.2, the bar noted that further amendments required reorganization of the subdivision in order to be clear, concise, and meet this Court’s style guide. The phrasing was rearranged and the phrase "if the copies" was deleted to clarify that the stipulations apply to original checks as well as copies and that this subdivision applies to all funds disbursed from the trust account. Numbered subdivisions were added for greater understanding and readability. No substantive changes were made other than those already approved by the Board of Governors. These non-substantive edits were not reviewed by the Board of Governors, but were approved by the chair of the Disciplinary Procedure Committee. They were properly noticed in both the print and online versions of the bar *News*.

11. The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal. The bar therefore requests that these additional revised proposals be accepted by this Court, and that this Court waive approval by the Board of Governors as to all the edits and Board of Governors approval and official notice in the print version of the bar *News* for all necessary rules, pursuant to R. Regulating Fla. Bar 1-12.1(i).

12. All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

VIII. Other Pending Amendments

13. As noted in section I, two other filings seeking separate amendments to the Rules Regulating The Florida Bar are pending before this Court:

(a) SC08-1181 and SC10-1014, – *In re: Amendments to the Rules Regulating The Florida Bar, Rule 4-7.6, Computer-Accessed Communications*. This Court granted the bar's motion to stay the effective date of amendments to rule 4-7.6 in SC08-1181 in light of the bar filing further amendments to rule 4-7.6 regarding websites, which was assigned a new case number, SC10-1014.

(b) SC10-437 *Rules Regulating The Florida Bar, Rule 4-7.1 and 4-7.2, Use of Title "Judge" by Former or Retired Judges* . This Court, on its own motion, directed that an official notice be published in the bar *News* of this Court's intent to adopt amendments to rule 4-7.1 and 4-7.2, R. Regulating Fla. Bar, addressing the use of the title "judge" by former or retired judges. A copy of the official notice was published in the April 15, 2010 issue of the bar *News*.

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

IX. Contents of Appendices

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

16. A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

17. The notice of intent to file this petition is provided in Appendix C.

18. Various communications of note that were received during the rules development process, and which are specifically referenced in this petition where relevant to specific amendments, are provided in Appendix D.

X. Comments in Response to Amendments

19. Since the official notice of intent to file this petition, no written comments have been received by the bar. During the rules development process prior to adoption of the proposals by the Board of Governors and prior to the official notice of intent to file this petition, four bar members sent written comments to the bar indicating their disagreement with the bar's proposal to prohibit the use of nonlawyer signatories on a trust account in rule 5-1.2, stating that the provision will create a hardship for sole practitioners. These comments were provided to the Board of Governors for its consideration prior to its vote approving the amendments, notwithstanding these bar member comments. The comments appear in Appendix D, pages 53-59.

20. The bar has not received comments on any other amendments. If additional comments are filed 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).

XI. Oral Argument Not Requested

21. The bar does not seek oral argument regarding these amendments, unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

XII. Effective Date Request

22. As to all amendments sought in this filing, the bar requests that any changes be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court 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

John G. White III
President 2008-09
Florida Bar Number 389640

Nancy Wood Gregoire
Chair, Rules Committee 2008-09
Chair, Rules Committee 2010-11
Florida Bar Number 475688

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Scott Hawkins
President-elect 2011-12
Florida Bar Number 460117

October 15, 2010

CERTIFICATE OF TYPE SIZE AND STYLE

I 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 READ-AGAINST

I 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 2010* by Rebecca S. Burke, Rules Administrative Coordinator.

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

October 15, 2010

