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 HOUSEKEEPING

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 two 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 this petition involve 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 §VI, ¶7.

4. This petition is the housekeeping petition for the biannual filing. The bar believes this housekeeping petition will require less of this Court's time and reflection, and that this Court may then have the option of issuing an opinion in this petition sooner than the other petition.

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 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

Rule 3-7.1 Confidentiality

Explanation: Within subdivision (d), adds reference to new subdivision (m), which maintains privacy rights under existing laws and court rules; new subdivision (m) adds language to specifically follow rule 2.420 of the Rules of Judicial Administration regarding privacy of certain information in court records.

Reasons: The rule is designed to preserve privacy rights in otherwise public disciplinary proceedings. The proposed rule meshes the bar rules with rule 2.420, Rules of Judicial Administration, dealing with privacy issues in otherwise public records to ensure the bar is following procedures established by Florida's courts.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

• Disciplinary Procedure Committee reviewed on March 15, 2006 and May 10, 2006; Disciplinary Procedure Committee directed staff to collect information concerning what data is protected and the procedures employed by courts for protecting confidential data in their proceedings; staff investigated this Court's

Report and Recommendations of the Committee on Privacy and Court Records, August 15, 2005 and the 6th Circuit's study of the same issues. On July 13, 2007 a subcommittee was appointed to further study this issue and on October 4, 2007 subcommittee chair Gregory S. Parker advised that the likely recommendation of the subcommittee would be a process providing for filing a sealed full copy of pleadings that contain protected information along with a redacted copy for the public record. A report on a meeting with the Clerk of this Court regarding these issues was presented at the January 18, 2008 meeting. The Disciplinary Procedure Committee, at its July 11, 2008 meeting, initiated a review of rule 2.420 of the Rules of Judicial Administration and considered incorporating that rule into the bar rules. That investigation continued following the July 24, 2008 Disciplinary Procedure Committee meeting with a proposed new subsection (m) that will assist the bar in complying with rule 2.420 of the Rules of Judicial Administration 2.420.

• 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.

• On January 29, 2009 Disciplinary Procedure Committee reviewed alternative language but reaffirmed original amended language by voice vote of 6-0.

Board Action: Board of Governors favorably reported on January 30, 2009.

Rule 3-7.3 Review of Inquiries, Complaint Processing, and Initial Investigatory Procedures

Explanation: In connection with proposed amendments to rule 14-1.1, within subdivision (a), clarifies that the bar's Grievance Mediation and Fee Arbitration Program is the reviewer for fee disputes under rule 14-4.1, Rules Regulating The Florida Bar.

Reasons: Reflects the current name of this program.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action: Disciplinary Procedure Committee favorably reported 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.

• 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.

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

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

Rule 3-7.4 Grievance Committee Procedures

Explanation: Deletes subdivision (p) to eliminate redundancies, incorporates all information regarding filing of formal complaints into subdivision (*l*) and adds Board of Governors to reflect the authority of the board under rule 3-7.5(c)(7) to find probable cause upon review of a grievance committee finding. Within subdivision (*l*), adds that the Supreme Court of Florida may order the chief judge of the circuit to assign a referee.

Reasons: Eliminates redundancy in subdivision (p) of the rule and incorporates all matters involving filing of formal complaints after a finding of probable cause by a grievance committee into subdivision (*l*). Also, within subdivision (*l*), adds Board of Governors to reflect the authority of the board to find probable cause upon review of a grievance committee finding; conforms the rule to the practice of the Court and adds the option for the chief judge of the circuit to assign a referee consistent with recent amendments to this rule in SC08-1890.

Source: Disciplinary Review Committee

Background Information – Member Commentary / Committee Action:

• Disciplinary Review Committee favorably reported by email vote of 8-0 on April 19, 2010.

• Rules Committee favorably reported procedural review by fax/email ballot of 6-0 on May 5, 2010.

• Budget Committee favorably reported fiscal review by ballot vote of 6-0 on May 10, 2010.

• Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on May 27, 2010.

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

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

Rule 3-7.5 Procedures Before the Board of Governors

Explanation: Within subdivision (g), adds language to include the executive director's designees as records custodians of official bar records.

Reasons: Amendments are needed to clarify and avoid any objections to business record affidavits of bar employees in referee proceedings and other circumstances where records must be authenticated or produced by the bar's records custodian(s).

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on March 6, 2009 conference call.

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

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

• Budget Committee favorably reported fiscal review by ballot vote of 8-0 on May 5, 2009.

• Rules Committee favorably reported procedural review by voice vote of 8-0 on May 5, 2009 conference call.

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

Rule 3-7.6 Procedures Before a Referee

Explanation: Amends subdivision (h)(8), to add that if a referee is disqualified from a case, the chief judge of the circuit in which the original referee resided shall appoint a successor referee from that same circuit.

Reasons: When a referee is disqualified, currently rule 3-7.6 requires the matter to go back to the Chief Justice of this Court, who then orders the chief judge of the circuit to appoint a successor referee. The proposed amendment would save time for the parties and the courts by eliminating this extra step in the process.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

• Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on January 28, 2010 after a minor change to the wording of the first sentence in subdivision (h)(8).

• 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.

• 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.

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

Rule 4-1.6 Confidentiality of Information;

Rule 4-1.10 Imputation of Conflicts of Interest; General Rule;

Rule 4-1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees;

Rule 4-1.17 Sale of Law Practice

Explanation: Housekeeping edits throughout rules to conform rules to prior amendments to rule 4-1.9. Changes or adds reference to new subdivision (c) of rule 4-1.9 regarding disclosure of confidential information of former clients within: rule 4-1.6 commentary, subdivisions (b) and (c)(2) and commentary of rule 4-1.10, subdivision (a)(1) of 4-1.11, and commentary to rule 4-1.17.

Reasons: Housekeeping edits throughout add references to new subdivision (c) of rule 4-1.9 which was amended by the Florida Supreme Court on November 19, 2009, effective February 1, 2010, in the case of *In re Amendments to the Rules Regulating the Florida Bar*, 24 So.3d 63 (Fla. 2009), No. SC08-1890.

Source: Florida Bar Staff

Background Information – Member Commentary / Committee Action:

• On March 26, 2010 Board of Governors meeting agenda for first reading.

• Rules Committee favorably reported substantive and procedural review by fax/email ballot of 5-0 on May 5, 2010.

• Budget Committee favorably reported fiscal review by ballot vote of 6-0 on May 10, 2010.

• Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on May 27, 2010.

• On May 28, 2010 Board of Governors meeting agenda.

Board Action: Board of Governors favorably reported on consent at the July 23, 2010 Board of Governors meeting.

Rule 4-1.12 Former Judge or Arbitrator, Mediator or Other Third-Party Neutral

Explanation: In connection with proposed amendments to rule 4-2.4 in this petition and proposed amendments to rule 4-8.3 in the Biannual Filing, within the comment to rule 4-1.12, adds "or court-appointed" to clarify that bar members who are either certified or court-appointed mediators are governed by applicable law and rules relating to certified or court-appointed mediators.

Reasons: The amendment notifies bar members who are court-appointed mediators that they should look to law and mediator ethics rules to determine the appropriate course of conduct. 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. This change was recommended by the Mediator Ethics Advisory Committee after they reviewed proposed changes to rule 4-8.3 that were proposed by bar member Brian F. Spector.

Source: Mediator Ethics Advisory Committee

Background Information – Member Commentary / Committee Action:

• Professional Ethics Committee favorably reported amendments drafted by staff on 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 4-2.4 Lawyer Serving as Third-Party Neutral

Explanation: In connection with proposed amendments to rule 4-1.12 in this petition and proposed amendments to rule 4-8.3 in the Biannual Filing, within the comment to rule 4-2.4, adds "or court-appointed" to clarify that bar members who are either certified or court-appointed mediators are governed by applicable law and rules relating to certified or court-appointed mediators.

Reasons: The amendment notifies bar members who are court-appointed mediators that they should look to law and mediator ethics rules to determine the appropriate course of conduct. 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. This change was recommended by the Mediator Ethics Advisory Committee after they reviewed proposed changes to Rule 4-8.3 that were proposed by bar member Brian F. Spector.

Source: Mediator Ethics Advisory Committee

Background Information – Member Commentary / Committee Action:

• Mediator Ethics Advisory Committee proposed.

• Professional Ethics Committee approved amendments drafted by staff on 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 5-1.1(e) Trust Accounts: Delivery; Accounting; Garnishment reference added to Comment

Explanation: Within the comment, adds reference to a Florida Supreme Court decision that lawyer trust accounts may be the proper target of garnishment actions but leaves the interpretation of the law to the discretion of the lawyer.

Reasons: This Court's decision in *Arnold, Matheny and Eagan, P.A.* v. *First American Holdings, Inc.*, 982 So.2d 628 (Fla. 2008) prompted a reference in the Comment to rule 5-1.1 to put lawyers on notice that their trust accounts may now be the proper target of garnishment actions. No additional language was added to the body of rule 5-1.1 itself because it is not the purpose of the Rules Regulating The Florida Bar to give legal advice to lawyers. This reference serves as a notice to lawyers of the applicable court decision, but leaves the interpretation of the law to the discretion of the individual lawyer.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

• Disciplinary Procedure Committee initially discussed on July 11, 2008; Disciplinary Procedure Committee favorably reported by voice vote of 4-0 on July 24, 2008 to leave the language of 5-1.1(e) in its original form, but voted 4-0 to

amend the comment to include the Florida Supreme Court's latest ruling on garnishment of lawyer trust accounts.

• 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 10-6.2 Subpoenas

Explanation: Amends rule to conform to Florida Rules of Civil Procedure regarding return of subpoena.

Reasons: Conforms rule to Florida Rules of Civil Procedure regarding return of subpoena and clarifies which court has authority to enforce a subpoena. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by such orders necessary for the enforcement of the subpoena. The Supreme Court of Florida or the circuit court of the circuit in which the subpoena was issued or where the contemnor may be found has the authority to issue the order to enforce the subpoena.

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 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 10-6.3 Recommendations and Disposition of Complaints

Explanation: Within subdivision (a), removes "forward a" from the rule as reports are given at meetings.

Reasons: Removes unnecessary language from the rule to conform to current practice of reporting at the meetings.

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 18-0 on June 25, 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 10-7.1 Proceedings for Injunctive Relief

Explanation: Within subdivision (f)(1), amends time frame from 10 days to 20 days for the reply brief to conform to Florida Rules of Appellate Procedure.

Reasons: At the request of the Clerk of this Court during an in-person meeting with bar staff, the proposed changes are proposed in order to bring the due dates for reply briefs into conformance with the Florida Rules of Appellate Procedure. The current rule is confusing to appellate practitioners who do not normally handle bar UPL matters because the time periods of the current rule differ from established procedures under the Florida Rules of Appellate Procedure. The amendment gives more time to respond.

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 25-0 on January 15, 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 10-7.2 Proceedings for Indirect Criminal Contempt

Explanation: Within subdivision (e), amends the time frame the reply brief is due from 10 days to 20 days to conform to Florida Rules of Appellate Procedure.

Reasons: At the request of the Clerk of this Court during an in-person meeting with bar staff, the proposed changes are proposed in order to bring the due dates for reply briefs into conformance with the Florida Rules of Appellate Procedure. The current rule is confusing to appellate practitioners who do not normally handle bar UPL matters because the time periods of the current rule differ from established procedures under the Florida Rules of Appellate Procedure. The amendment gives more time to respond.

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 25-0 on January 15, 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 10-8.1 Confidentiality

Explanation: Within subdivision (e)(4), clarifies that the UPL record becomes public when a designated reviewer approves a recommendation for litigation.

Reasons: Clarifies when records become public.

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 unanimous vote on June 20, 2008.

• Rules Committee favorably reported substantive and procedural review by voice vote of 7-0 on September 4, 2008.

• On Board of Governors agenda for first reading on October 3, 2008.

• 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 20-3.1 Requirements for Registration

Explanation: Within subdivision (a)(2), allows a degree higher than a bachelor's degree to be used for eligibility for registration.

Reasons: Allows applicants who received a bachelors or associates degree from an unaccredited institution but a higher degree from an institution that is accredited to be considered for registration as a Florida Registered Paralegal. Without the amendment the higher degree is not taken into consideration when determining eligibility.

Source: Florida Registered Paralegal Program Committee

Background Information – Member Commentary / Committee Action:

• Florida Registered Paralegal Committee favorably reported by unanimous vote on September 12, 2008.

• Rules Committee favorably reported substantive and procedural review 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.

Rule 20-7.1 Generally

Explanation: Within subdivision (a), clarifies language that can be used to meet disclosure requirement.

Reasons: There was some confusion on what language could be used to meet the disclosure requirement. Amendment clarifies this.

Source: Florida Registered Paralegal Program Committee

Background Information – Member Commentary / Committee Action:

• Florida Registered Paralegal Committee favorably reported by vote of 3-0 on June 26, 2009.

• Rules Committee made 1 minor edit and 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.

V. Official Notice of Amendments

6. 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/0955FE8C6D2ADCDC852574B100494AD0*.

VI. Editorial Corrections and Request for Waiver of Rules Procedures

7. During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed in the print version of the bar *News*. 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 Appendix B.

8. 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 that this Court waive 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*).

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

VII. Other Pending Amendments

10. 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*.

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

VIII. Contents of Appendices

12. 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).

13. 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.

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

IX. Comments in Response to Amendments

15. Since the official notice of intent to file this petition, no written comments have been received by the bar.

16. If 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).

X. Oral Argument Not Requested

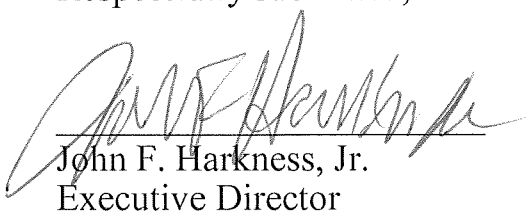
17. The bar does not seek oral argument regarding these amendments, unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

XI. Effective Date Request

18. 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,



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Nancy Wood Gregoire
Chair, Rules Committee 2008-09
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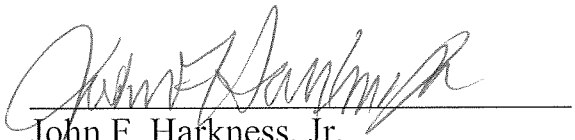
October 15, 2010

CERTIFICATE OF TYPE SIZE AND STYLE

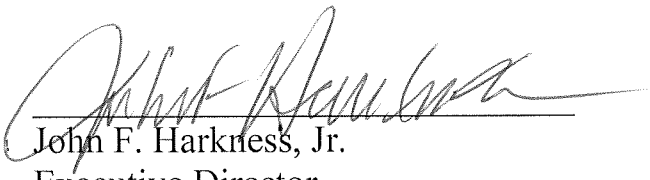
I certify that this petition is typed in 14 point Times New Roman Regular type.



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

APPENDIX A

PROPOSED AMENDMENTS IN LEGISLATIVE FORMAT

Housekeeping

October 15, 2010

RULES REGULATING THE FLORIDA BAR

CHAPTER 3. RULES OF DISCIPLINE
3-7. PROCEDURES
RULE 3-7.1 CONFIDENTIALITY

(a) Scope of Confidentiality. All matters including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those disciplinary matters conducted in circuit courts, are property of The Florida Bar. All of those matters shall be confidential and shall not be disclosed except as provided herein. When disclosure is permitted under these rules, it shall be limited to information concerning the status of the proceedings and any information that is part of the public record as defined in these rules.

Unless otherwise ordered by this court or the referee in proceedings under these rules, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules, or from disclosing any documents or correspondence served on or provided to those persons.

(1) *Pending Investigations*. Disciplinary matters pending at the initial investigatory and grievance committee levels shall be treated as confidential by The Florida Bar, except as provided in rules 3-7.1(e) and (k).

(2) *Minor Misconduct Cases*. Any case in which a finding of minor misconduct has been entered by action of the grievance committee or board shall be public information.

(3) *Probable Cause Cases*. Any disciplinary case in which a finding of probable cause for further disciplinary proceedings has been entered shall be public information. For purposes of this subdivision a finding of probable cause shall be deemed to have been made in those cases authorized by rule 3-3.2(a), for the filing of a formal complaint without the prior necessity of a finding of probable cause.

(4) *No Probable Cause Cases*. Any disciplinary case that has been concluded by a finding of no probable cause for further disciplinary proceedings shall be public information.

(5) *Diversion or Referral to Grievance Mediation Program*. Any disciplinary case that has been concluded by diversion to a practice and professionalism enhancement program or by referral to the grievance mediation program shall be public information upon the entry of such a recommendation.

(6) *Contempt Cases*. Contempt proceedings authorized elsewhere in these rules shall be public information even though the underlying disciplinary matter is confidential as defined in these rules.

(7) *Incapacity Not Involving Misconduct*. Proceedings for placement on the inactive list for incapacity not involving misconduct shall be public information upon the filing of the petition with the Supreme Court of Florida.

(8) *Petition for Emergency Suspension or Probation*. Proceedings seeking a petition for emergency suspension or probation shall be public information.

(9) *Proceedings on Determination or Adjudication of Guilt of Criminal Misconduct*. Proceedings on determination or adjudication of guilt of criminal misconduct, as provided elsewhere in these rules, shall be public information.

(10) *Professional Misconduct in Foreign Jurisdiction*. Proceedings based on disciplinary sanctions entered by a foreign court or other authorized disciplinary agency, as provided elsewhere in these rules, shall be public information.

(11) *Reinstatement Proceedings*. Reinstatement proceedings, as provided elsewhere in these rules, shall be public information.

(12) *Disciplinary Resignations*. Proceedings involving petitions for disciplinary resignation, as provided elsewhere in these rules, shall be public information.

(b) Public Record. The public record shall consist of the record before a grievance committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers,

recordings, and/or transcripts of hearings furnished to, served on, or received from the respondent or the complainant.

(c) Circuit Court Proceedings. Proceedings under rule 3-3.5 shall be public information.

(d) Limitations on Disclosure. Any material provided to The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida.

The procedure for maintaining the required confidentiality shall be as set forth in subdivision (m) below.

(e) Response to Inquiry. Authorized representatives of The Florida Bar shall respond to specific inquiries concerning matters that are in the public domain, but otherwise confidential under the rules, by acknowledging the status of the proceedings.

(f) Notice to Law Firms. When a disciplinary file is opened the respondent shall disclose to the respondent's current law firm and, if different, the respondent's law firm at the time of the act or acts giving rise to the complaint, the fact that a disciplinary file has been opened. Disclosure shall be in writing and in the following form:

> A complaint of unethical conduct against me has been filed with The Florida Bar. The nature of the allegations are_____. This notice is provided pursuant to rule 3-7.1(f) of the Rules Regulating The Florida Bar.

The notice shall be provided within 15 days of notice that a disciplinary file has been opened and a copy of the above notice shall be served on The Florida Bar.

(g) Production of Disciplinary Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the public record, even if the disciplinary proceeding is confidential under these rules. The Florida

Bar may charge a reasonable fee for identification of and photocopying the documents.

(h) Notice to Judges. Any judge of a court of record upon inquiry of the judge shall be advised and, absent an inquiry, may be advised as to the status of a confidential disciplinary case and may be provided with a copy of documents in the file that would be part of the public record if the case was not confidential. The judge shall maintain the confidentiality of the records and shall not otherwise disclose the status of the case.

(i) Evidence of Crime. The confidential nature of these proceedings shall not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

(j) Chemical Dependency and Psychological Treatment. That an attorney has voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems shall be confidential and shall not be admitted as evidence in disciplinary proceedings under these rules unless agreed to by the attorney who sought the treatment.

For purposes of this subdivision, an attorney shall be deemed to have voluntarily sought, received, or accepted treatment for chemical dependency or psychological problems if the attorney was not under compulsion of law or rule to do so, or if the treatment is not a part of conditional admission to The Florida Bar or of a disciplinary sanction imposed under these rules.

It is the purpose of this subdivision to encourage attorneys to voluntarily seek advice, counsel, and treatment available to attorneys, without fear that the fact it is sought or rendered will or might cause embarrassment in any future disciplinary matter.

(k) Response to False or Misleading Statements. If public statements that are false or misleading are made about any otherwise confidential disciplinary case, The Florida Bar may disclose all information necessary to correct such false or misleading statements.

(*l*) Disclosure by Waiver of Respondent. Upon written waiver executed by a respondent, The Florida Bar may disclose the status of otherwise confidential disciplinary proceedings and provide copies of the public record to:

(1) the Florida Board of Bar Examiners or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of an applicant for admission to practice law in that jurisdiction; or

(2) Florida judicial nominating commissions or the comparable body in other jurisdictions for the purpose of evaluating the character and fitness of a candidate for judicial office; or

(3) the governor of the State of Florida for the purpose of evaluating the character and fitness of a nominee to judicial office.

(m) Maintaining Confidentiality Required by Rule or Law. The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Jud. Admin 2.420. It shall be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that such documents or information contain material that is exempt from disclosure under applicable rule or law and to request that such exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES

(a) Screening of Inquiries. Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. If bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under ~~4-1.5 of the Rules Regulating The Florida Bar~~these rules, bar counsel may, with the consent of the complainant and respondent, refer the matter to ~~the appropriate circuit arbitration committee for arbitration~~The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14. If bar counsel determines that the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline, bar counsel may decline to pursue the inquiry. A decision by bar counsel not to pursue an inquiry shall not preclude further action or review under the Rules Regulating The Florida Bar. The complainant and respondent shall be notified of a decision not to pursue an inquiry and shall be given the reasons therefor.

(b) Complaint Processing and Bar Counsel Investigation. If bar counsel decides to pursue an inquiry, a disciplinary file shall be opened and the inquiry shall be considered as a complaint, if the form requirement of subdivision (c) is met. Bar counsel shall investigate the allegations contained in the complaint.

(c) Form for Complaints. All complaints, except those initiated by The Florida Bar, shall be in writing and under oath. The complaint shall contain a statement providing:

Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.

(d) Dismissal of Disciplinary Cases. Bar counsel may dismiss disciplinary cases if, after complete investigation, bar counsel determines that the facts show that the respondent did not violate the Rules Regulating The Florida Bar. Dismissal by bar counsel shall not preclude further action or review under the Rules Regulating The Florida Bar. Nothing in these rules shall preclude bar counsel from obtaining the concurrence of the grievance committee chair on the dismissal of a case or on dismissal of the

case with issuance of a letter of advice as described elsewhere in these Rules Regulating The Florida Bar. If a disciplinary case is dismissed, the complainant shall be notified of the dismissal and shall be given the reasons therefor.

(e) Diversion to Practice and Professionalism Enhancement Programs. Bar counsel may recommend diversion of disciplinary cases as provided elsewhere in these rules if, after complete investigation, bar counsel determines that the facts show that the respondent's conduct did not constitute disciplinary violations more severe than minor misconduct.

(f) Referral to Grievance Committees. Bar counsel may refer disciplinary cases to a grievance committee for its further investigation or action as authorized elsewhere in these rules. Bar counsel may recommend specific action on a case referred to a grievance committee.

(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff. When bar counsel does not pursue an inquiry or dismisses a disciplinary case, such action shall be deemed a finding of no probable cause for further disciplinary proceedings and the matter shall become public information.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. When notice of a grievance committee hearing is sent to the respondent, such notice shall be accompanied by a list of the grievance committee members.

(b) Complaint Filed With Grievance Committee. A complaint received by a committee direct from a complainant shall be reported to the appropriate bar counsel for docketing and assignment of a case number, unless the committee resolves the complaint within 10 days after receipt of the complaint. A written report to bar counsel shall include the following information: complainant's name and address, respondent's name, date complaint received by committee, copy of complaint letter or summary of the oral complaint made, and the name of the committee member assigned to the investigation. Formal investigation by a grievance committee may proceed after the matter has been referred to bar counsel for docketing.

(c) Investigation. A grievance committee is required to consider all charges of misconduct forwarded to the committee by bar counsel whether based upon a written complaint or not.

(d) Conduct of Proceedings. The proceedings of grievance committees may be informal in nature and the committees shall not be bound by the rules of evidence.

(e) No Delay for Civil or Criminal Proceedings. An investigation shall not be deferred or suspended without the approval of the board even though the respondent is made a party to civil litigation or is a defendant or is acquitted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation.

(f) Counsel and Investigators. Upon request of a grievance committee, staff counsel may appoint a bar counsel or an investigator to assist the committee in an investigation. Bar counsel shall assist each grievance committee in carrying out its investigative and administrative duties and shall prepare status reports for the committee, notify complainants and respondents of committee actions as appropriate, and prepare all reports reflecting committee findings of probable cause, no probable cause, recommended discipline for minor misconduct, and letters of advice after no probable cause findings.

(g) Quorum, Panels, and Vote.

(1) *Quorum*. Three members of the committee, 2 of whom must be lawyers, shall constitute a quorum.

(2) *Panels*. The grievance committee may be divided into panels of not fewer than 3 members, 2 of whom must be lawyers. Division of the grievance committee into panels shall only be upon concurrence of the designated reviewer and the chair of the grievance committee. The 3-member panel shall elect 1 of its lawyer members to preside over the panel's actions. If the chair or vice-chair is a member of a 3-member panel, the chair or vice-chair shall be the presiding officer.

(3) *Vote*. All findings of probable cause and recommendations of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee members present, which majority must number at least 2 members. There shall be no required minimum number of lawyer members voting in order to satisfy the requirements of this rule. The number of committee members voting for or against the committee report shall be recorded. Minority reports may be filed. A lawyer grievance committee member may not vote on the disposition of any matter in which that member served as the investigating member of the committee.

(h) Rights and Responsibilities of the Respondent. The respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or minor misconduct is made, the respondent shall be advised of the conduct that is being investigated and the rules that may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

(i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. Unless it is found to be impractical by the chair of the grievance committee due to unreasonable

delay or other good cause, the complainant shall be granted the right to be present at any grievance committee hearing when the respondent is present before the committee. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution, will excuse the completion of an investigation. The complaining witness shall have no right to appeal.

(j) Finding of No Probable Cause.

(1) *Authority of Grievance Committee*. A grievance committee may terminate an investigation by finding that no probable cause exists to believe that the respondent has violated these rules. The committee may issue a letter of advice to the respondent in connection with the finding of no probable cause.

(2) *Notice of Committee Action.* Bar counsel shall notify the respondent and complainant of the action of the committee.

(3) *Effect of No Probable Cause Finding*. A finding of no probable cause by a grievance committee shall not preclude the reopening of the case and further proceedings therein.

(4) *Disposition of Committee Files*. Upon the termination of the grievance committee's investigation, the committee's file shall be forwarded to bar counsel for disposition in accord with established bar policy.

(k) Letter Reports in No Probable Cause Cases. Upon a finding of no probable cause, bar counsel will submit a letter report of the no probable cause finding to the complainant, presiding member, investigating member, and the respondent, including any documentation deemed appropriate by bar counsel and explaining why the complaint did not warrant further proceedings. Letters of advice issued by a grievance committee in connection with findings of no probable cause shall be signed by the presiding member of the committee. Letter reports and letters of advice shall not constitute a disciplinary sanction.

(*l*) Preparation, Forwarding, and Review of Grievance Committee Complaints. If a grievance committee or the board of governors finds probable cause, the bar counsel assigned to the committee

shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be approved by the member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes accordingly. If bar counsel does not agree with the changes, the matter shall be referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or is not returned to the grievance committee for further action, the formal complaint shall be promptly forwarded to and reviewed by staff counsel. ~~who~~ Staff counsel shall file the formal complaint~~,~~ and furnish a copy ~~of the formal complaint~~ to the respondent. Staff counsel shall request the Supreme Court of Florida assign a referee, or order the chief judge of the circuit where venue is lodged to assign a referee, to try the cause. A copy of the record shall be made available to the respondent at the respondent's expense.

If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action.

(m) Recommendation of Admonishment for Minor Misconduct. If the committee recommends an admonishment for minor misconduct, the grievance committee report shall be drafted by bar counsel and signed by the presiding member. The committee report need only include:

(1) the committee's recommendations regarding the admonishment, revocation of certification, and conditions of recertification;

(2) the committee's recommendation as to the method of administration of the admonishment;

(3) a summary of any additional charges that will be dismissed if the admonishment is approved;

(4) any comment on mitigating, aggravating, or evidentiary matters that the committee believes will be helpful to the board in passing upon the admonishment recommendation; and

(5) an admission of minor misconduct signed by the respondent, if the respondent has admitted guilt to minor misconduct. No record need be submitted with such a report.

After the presiding member signs the grievance committee report, the report shall be returned to bar counsel. The report recommending an admonishment shall be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect therein, or if the designated reviewer does not present the same to the disciplinary review committee for action by the board, the report shall then be served on the respondent by bar counsel.

(n) Rejection of Admonishment. The order of admonishment shall become final unless rejected by the respondent within 15 days after service upon the respondent. If rejected by the respondent, the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause.

(*o*) Recommendation of Diversion to Remedial Programs. A grievance committee may recommend, as an alternative to issuing a finding of minor misconduct or no probable cause with a letter of advice, diversion of the disciplinary case to a practice and professionalism enhancement program as provided elsewhere in these rules. A respondent may reject the diversion recommendation in the same manner as provided in the rules applicable to rejection of findings of minor misconduct. In the event that a respondent rejects a recommendation of diversion, the matter shall be returned to the committee for further proceedings.

~~**(p) Preparation, Review, and Filing of Complaint.** When a grievance committee formal complaint is not referred to the disciplinary review committee, or returned to the grievance committee, staff counsel~~

~~_____ a, serve a copy on the respondent, and request the Supreme Court of Florida to assign a referee to try the cause. If probable cause is found by the board, bar counsel will prepare the formal complaint.~~

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. Notice of grievance committee action recommending either diversion to a practice and professionalism enhancement program or finding no probable cause, no probable cause with a letter of advice, minor misconduct, or probable cause shall be given to the designated reviewer for review. The designated reviewer may request grievance committee reconsideration or refer the matter to the disciplinary review committee of the board of governors within 30 days of notice of grievance committee action. The request for a grievance committee reconsideration or referral to the disciplinary review committee shall be in writing and shall be submitted to bar counsel. For purposes of this subdivision letters, memoranda, handwritten notes, facsimile documents, and email shall constitute "in writing."

(1) *Requests for Grievance Committee Reconsideration.* If the designated reviewer requests grievance committee reconsideration, bar counsel shall forward the request to the chair of the grievance committee and shall give notice to the respondent and complainant that the request has been made. If the grievance committee agrees to reconsider the matter, the rule prescribing procedures before a grievance committee shall apply.

(2) *Referrals to Disciplinary Review Committee and Board of Governors.* If the designated reviewer refers the matter to the disciplinary review committee, bar counsel shall prepare and submit a discipline agenda item for consideration by the committee. Bar counsel shall give notice to respondent and complainant that the designated reviewer has made the referral for review.

(3) *Nature of Disciplinary Review Committee and Board of Governors Review.* The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any such review on referral from a designated reviewer is in the nature of consultation on pending litigation and therefore is not subject to intervention by persons outside the relationship between the bar and its counsel.

(4) *Effect of Failure to Timely Make the Request for Reconsideration or Referral for Review*. If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the grievance committee action shall become final.

(5) *Authority of Designated Reviewer to Make Recommendations*. When the designated reviewer makes a request for reconsideration or referral for review, the designated reviewer may recommend:

(A) referral of the matter to the grievance mediation program;

(B) referral of the matter to the fee arbitration program;

(C) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(D) closure of the disciplinary file by the entry of a finding of no probable cause;

(E) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(F) a finding of minor misconduct; or

(G) a finding of probable cause that further disciplinary proceedings are warranted.

(b) Review of Grievance Committee Matters. The disciplinary review committee shall review those grievance committee matters referred to it by a designated reviewer and shall make a report to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee shall be final unless overruled by the board. Recommendations of the disciplinary review committee may include:

(1) referral of the matter to the grievance mediation program;

(2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(c) Board Action on Review of Designated Reviewer Recommendations. On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part. Action by the board may include:

(1) referral of the matter to the grievance mediation program;

(2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(d) Notice of Board Action. Bar counsel shall give notice of board action to the respondent, complainant, and grievance committee.

(e) Finding of No Probable Cause. A finding of no probable cause by the board shall be final and no further proceedings shall be had in the matter by The Florida Bar.

(f) Control of Proceedings. Bar counsel, however appointed, shall be subject to the direction of the board at all times. The board, in the exercise of its discretion as the governing body of The Florida Bar, has the power to terminate disciplinary proceedings before a referee prior to the receipt of evidence by the referee, whether such proceedings have been instituted upon a finding of probable cause by the board or a grievance committee.

(g) Filing Service on Board of Governors. All matters to be filed with or served upon the board shall be addressed to the board of governors and filed with the executive director. The executive director or his designees shall be the custodians of the official records of The Florida Bar.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees.

(1) *Appointment*. The chief justice shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. Such appointees shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

(2) *Minimum Qualifications*. To be eligible for appointment as a referee under this rule the judge must have previously served as a judicial referee in proceedings instituted under these rules before February 1, 2010, at 12:01 a.m., or must have received the referee training materials approved by the Supreme Court of Florida and certified to the chief judge that the training materials have been reviewed.

(b) Trial by Referee. When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

(c) Pretrial Conference. Within 60 days of the order assigning the case to the referee, the referee shall conduct a pretrial conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court of Florida; provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, Complainant, v. …..(name of respondent)….., Respondent," and "In The Supreme Court of Florida (Before a Referee)."

(f) Nature of Proceedings.

(1) *Administrative in Character*. A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery*. Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(g) Bar Counsel. Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned.

(h) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance*.

(A) Filing. The complaint shall be filed in the Supreme Court of Florida.

(B) Content. The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

(C) Joinder of Charges and Respondents; Severance. A complaint may embrace any number of charges against 1 or more respondents, and charges may be against any 1 or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.

(2) *Answer and Motion*. The respondent shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum.

All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint.

(3) *Reply*. If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(4) *Disposition of Motions*. Hearings upon motions may be deferred until the final hearing, and, whenever heard, rulings thereon may be reserved until termination of the final hearing.

(5) *Filing and Service of Pleadings*.

(A) Prior to Appointment of Referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made. On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on staff counsel and bar counsel of The Florida Bar and on all interested parties to the proceedings.

(6) *Amendment*. Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(7) *Expediting the Trial*. If it shall be made to appear that the date of final hearing should be expedited in the public interest, the referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule.

(8) *Disqualification of Referee*. ~~Upon motion of either party, a~~A referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification, the chief ~~justice~~judge of the circuit in which the original referee resided shall appoint a successor referee from that same circuit.

(i) Notice of Final Hearing. The cause may be set down for trial by either party or the referee upon not less than 10 days' notice. The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent's answer, or if no answer is filed, then from the date when such answer is due.

(j) The Respondent. Unless the respondent claims a privilege or right properly available under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent is subpoenaed to appear and give testimony or to produce books, papers, or documents and refuses to answer or to produce such books, papers, or documents, or, having been duly sworn to testify, refuses to answer any proper question, the respondent may be cited for contempt of the court.

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding, and shall have no rights other than those of any other witness. However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the referee may grant the complaining witness the right to be present at any hearing when the respondent is also present. A complaining witness may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial. The complaining witness shall have no right to appeal.

(*l*) Parol Evidence. Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract may

be used only if necessary to resolve issues of excessive fees or excessive costs.

(m) Referee's Report.

(1) *Contents of Report*. Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

(A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding;

(B) recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures;

(C) recommendations as to the disciplinary measures to be applied;

(D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

(E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed.

(2) *Filing*. The referee's report and record of proceedings shall in all cases be transmitted together to the Supreme Court of Florida. Copies of the report shall be served on the parties including staff counsel. Bar counsel will make a copy of the record, as furnished, available to other parties on request and payment of the actual costs of

reproduction. The report of referee and record shall not be filed until the time for filing a motion to assess costs has expired and no motion has been filed or, if the motion was timely filed, until the motion has been considered and a ruling entered.

(n) The Record.

(1) *Recording of Testimony*. All hearings at which testimony is presented shall be attended by a court reporter who shall record all testimony. Transcripts of such testimony are not required to be filed in the matter, unless requested by a party, who shall pay the cost of transcription directly, or ordered by the referee, in which case the costs thereof are subject to assessment as elsewhere provided in these rules.

(2) *Contents*. The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(3) *Preparation and Filing*. The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(4) *Supplementing or Removing Items from the Record*. The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(*o*) Plea of Guilty by Respondent. At any time during the progress of disciplinary proceedings, a respondent may tender a plea of guilty.

(1) *Before Filing of Complaint*. If the plea is tendered before filing of a complaint by staff counsel, such plea shall be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint*. If the complaint has been filed against the respondent, the respondent may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial. Such referee shall take such testimony thereto as may be advised, following which the referee will enter a report as otherwise provided.

(3) *Unconditional*. An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure*. Except as herein provided, all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

(p) Cost of Review or Reproduction.

(1) The charge for reproduction, when photocopying or other reproduction is performed by the bar, for the purposes of these rules shall be as determined and published annually by the executive director. In addition to reproduction charges, the bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings and identification of documents to be reproduced.

(2) When the bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in the possession of the bar, the bar may decline to reproduce the documents in the offices of the bar and shall inform the requesting person of the following options:

(A) purchase of the transcripts from the court reporter service that produced them;

(B) purchase of the documents from the third party from whom the bar received them; or

(C) designation of a commercial photocopy service to which the bar shall deliver the original documents to be copied, at the requesting party's expense, provided the photocopy service

agrees to preserve and return the original documents and not to release them to any person without the bar's consent.

(q) Costs.

(1) *Taxable Costs*. Taxable costs of the proceedings shall include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee;

(H) travel and out-of-pocket expenses of counsel in the proceedings, including of the respondent if acting as counsel; and

(I) an administrative fee in the amount of $1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee*. The referee shall have discretion to award costs and, absent an abuse of discretion, the referee's award shall not be reversed.

(3) *Assessment of Bar Costs*. When the bar is successful, in whole or in part, the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Respondent's Costs*. When the bar is unsuccessful in the prosecution of a particular matter, the referee may assess the respondent's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar.

(5) *Time for Filing Motion to Assess Costs*. A party shall file a statement of costs incurred in a referee proceeding and a request for payment of same within 15 days after written notice by the referee that the report of referee has been completed or at the time that a guilty plea for consent judgment is filed. Failure to timely file a motion, without good cause, shall be considered as a waiver of the right to request reimbursement of costs or to object to a request for reimbursement of costs. The party from whom costs are sought shall have 10 days from the date the motion was filed in which to serve an objection. Because costs may not be assessed against the respondent unless the bar is successful in some part and because costs may not be assessed against the bar unless the referee finds the lack of a justiciable issue of law or fact, this subdivision shall not be construed to require the filing of a motion to assess costs before the referee when doing so is not appropriate.

Court Comment

A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.

Comment

Provisions for assessment of costs in proceedings before the Supreme Court of Florida are addressed in rule 3-7.7.

CHAPTER 4. RULES OF PROFESSIONAL CONDUCT
4-1. CLIENT-LAWYER RELATIONSHIP

* * *

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

(b) When Lawyer Must Reveal Information. A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent a client from committing a crime; or

(2) to prevent a death or substantial bodily harm to another.

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;

(3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;

(4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with the Rules of Professional Conduct.

(d) Exhaustion of Appellate Remedies. When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.

(e) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

Comment

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(~~b~~c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule

applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule 4-1.2(d). Similarly, a lawyer has a duty under rule 4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule 4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated rule 4-1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer shall reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule 4-1.6(b)(2) would now require the attorney to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule 4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in rule 4-1.6. Neither this rule nor rule 4-1.8(b) nor rule 4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule,

the lawyer may make inquiry within the organization as indicated in rule 4-1.13(b).

Dispute concerning lawyer's conduct

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (c)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This

aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See rules 4-2.3, 4-3.3, and 4-4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but a presumption should exist against such a supersession.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See rule 4-1.9 for the prohibition against using such information to the disadvantage of the former client.

RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE

(a) Imputed Disqualification of All Lawyers in Firm. While lawyers are associated in a firm, none of them shall knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7 or 4-1.9 except as provided elsewhere in this rule, or unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer. When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(d) Waiver of Conflict. A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in rule 4-1.7.

(e) Government Lawyers. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by rule 4-1.11.

Comment

Definition of "firm"

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by rule 4-1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by rule 4-1.11(c)(1). The individual lawyer involved is bound by the rules generally, including rules 4-1.6, 4-1.7, and 4-1.9.

Different provisions are thus made for movement of a lawyer from 1 private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in rules 4-1.6, 4-1.9, and 4-1.11. However, if the more extensive disqualification in rule 4-1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if rule 4-1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in rule 4-1.11.

Principles of imputed disqualification

The rule of imputed disqualification stated in subdivision (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially 1 lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Subdivision (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from 1 firm to another the situation is governed by subdivisions (b) and (c).

The rule in subdivision (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where 1 lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in subdivision (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See terminology and rule 4-5.3.

Lawyers moving between firms

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably

hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to 1 field or another, and that many move from 1 association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from 1 practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under 2 rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety and was proscribed in former Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are

involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients.

Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by rules 4-1.6 and 4-1.9(b) and (c). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.

Adverse positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed

disqualification. Hence, this aspect of the problem is governed by rule 4-1.9(a). Thus, if a lawyer left 1 firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters so long as the conditions of rule 4-1.10(b) and (c) concerning confidentiality have been met.

Rule 4-1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in rule 4-1.7. The conditions stated in rule 4-1.7 require the lawyer to determine that the representation is not prohibited by rule 4-1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing or clearly stated on the record. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see terminology.

Where a lawyer is prohibited from engaging in certain transactions under rule 4-1.8, subdivision (k) of that rule, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

RULE 4-1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Representation of Private Client by Former Public Officer or Employee. A lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to rule 4-1.9(b) and (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) Representation by Another Member of the Firm. When a lawyer is disqualified from representation under subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Use of Confidential Government Information. A lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is

screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Limits on Participation of Public Officer or Employee. A lawyer currently serving as a public officer or employee:

(1) is subject to rules 4-1.7 and 4-1.9; and

(2) shall not:

(A) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent; or

(B) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(e) Matter Defined. As used in this rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

A lawyer who has served or is currently serving as a public officer or employee is personally subject to the rules of professional conduct, including the prohibition against concurrent conflicts of interest stated in rule 4-1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this rule. See terminology for definition of informed consent.

Subdivisions (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 4-1.10 is not applicable to the conflicts of interest addressed by this rule. Rather, subdivision (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subdivision (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subdivisions (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subdivision (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subdivision (d). As with subdivisions (a)(1) and (d)(1), rule 4-1.10 is not applicable to the conflicts of interest addressed by these subdivisions.

This rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for

screening and waiver in subdivision (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subdivisions (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by 1 government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subdivision (d), the latter agency is not required to screen the lawyer as subdivision (b) requires a law firm to do. The question of whether 2 government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules. See rule 4-1.13 comment, government agency.

Subdivisions (b) and (c) contemplate a screening arrangement. See terminology (requirements for screening procedures). These subdivisions do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subdivision (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subdivisions (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 4-1.7 and is not otherwise prohibited by law.

For purposes of subdivision (e) of this rule, a "matter" may continue in another form. In determining whether 2 particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

RULE 4-1.12 FORMER JUDGE OR ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral. Except as stated in subdivision (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral. A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) Imputed Disqualification of Law Firm. If a lawyer is disqualified by subdivision (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is directly apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) Exemption for Arbitrator as Partisan. An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

This rule generally parallels rule 4-1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 4-1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2), and C of Florida's Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not "act as a lawyer in a proceeding in which [the lawyer] has served as a judge or in any other proceeding related thereto." Although phrased differently from this rule, those rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See terminology. Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See rule 4-2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 4-1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subdivision (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subdivision are met.

Requirements for screening procedures are stated in terminology. Subdivision (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to certified and court-appointed mediators.

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. The entire practice, or the entire area of practice, is sold to 1 or more lawyers or law firms authorized to practice law in Florida.

(b) Notice to Clients. Written notice is served by certified mail, return receipt requested, upon each of the seller's clients of:

(1) the proposed sale;

(2) the client's right to retain other counsel; and

(3) the fact that the client's consent to the substitution of counsel will be presumed if the client does not object within 30 days after being served with notice.

(c) Court Approval Required. If a representation involves pending litigation, there shall be no substitution of counsel or termination of representation unless authorized by the court. The seller may disclose, in camera, to the court information relating to the representation only to the extent necessary to obtain an order authorizing the substitution of counsel or termination of representation.

(d) Client Objections. If a client objects to the proposed substitution of counsel, the seller shall comply with the requirements of rule 4-1.16(d).

(e) Consummation of Sale. A sale of a law practice shall not be consummated until:

(1) with respect to clients of the seller who were served with written notice of the proposed sale, the 30-day period referred to in subdivision (b)(3) has expired or all such clients have consented to the substitution of counsel or termination of representation; and

(2) court orders have been entered authorizing substitution of counsel for all clients who could not be served with written notice of

the proposed sale and whose representations involve pending litigation; provided, in the event the court fails to grant a substitution of counsel in a matter involving pending litigation, that matter shall not be included in the sale and the sale otherwise shall be unaffected. Further, the matters not involving pending litigation of any client who cannot be served with written notice of the proposed sale shall not be included in the sale and the sale otherwise shall be unaffected.

(f) Existing Fee Contracts Controlling. The purchaser shall honor the fee agreements that were entered into between the seller and the seller's clients. The fees charged clients shall not be increased by reason of the sale.

Comment

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. In accordance with the requirements of this rule, when a lawyer or an entire firm sells the practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See rules 4-5.4 and 4-5.6.

The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Similarly, a violation does not occur merely because a court declines to approve the substitution of counsel in the cases of a number of clients who could not be served with written notice of the proposed sale.

Sale of entire practice or entire area of practice

The rule requires that the seller's entire practice, or an area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, or practice area, subject to client consent or court authorization. This requirement is satisfied, however, even if a purchaser is

unable to undertake a particular client matter because of a conflict of interest.

Client confidences, consent, and notice

Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client do not violate the confidentiality provisions of rule 4-1.6 any more than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent ordinarily is not required. Providing the prospective purchaser access to client-specific information relating to the representation and to the file, however, requires client consent or court authorization. See rule 4-1.6. Rule 4-1.17 provides that the seller must attempt to serve each client with written notice of the contemplated sale, including the identity of the purchaser and the fact that the decision to consent to the substitution of counsel or to make other arrangements must be made within 30 days. If nothing is heard within that time from a client who was served with written notice of the proposed sale, that client's consent to the substitution of counsel is presumed. However, with regard to clients whose matters involve pending litigation but who could not be served with written notice of the proposed sale, authorization of the court is required before the files and client-specific information relating to the representation of those clients may be disclosed by the seller to the purchaser and before counsel may be substituted.

A lawyer or law firm selling a practice cannot be required to remain in practice just because some clients cannot be served with written notice of the proposed sale. Because these clients cannot themselves consent to the substitution of counsel or direct any other disposition of their representations and files, with regard to clients whose matters involve pending litigation the rule requires an order from the court authorizing the substitution (or withdrawal) of counsel. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the substitution of counsel so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. If, however, the court fails to grant substitution of counsel in a matter involving pending litigation, that matter shall not be included in the sale and the sale may be consummated without inclusion of that matter.

The rule provides that matters not involving pending litigation of clients who could not be served with written notice may not be included in the sale. This is because the clients' consent to disclosure of confidential information and to substitution of counsel cannot be obtained and because the alternative of court authorization ordinarily is not available in matters not involving pending litigation. Although such matters shall not be included in the sale, the sale may be consummated without inclusion of those matters.

If a client objects to the proposed substitution of counsel, the rule treats the seller as attempting to withdraw from representation of that client and, therefore, provides that the seller must comply with the provisions of rule 4-1.16 concerning withdrawal from representation. Additionally, the seller must comply with applicable requirements of law or rules of procedure.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or an area of practice.

Fee arrangements between client and purchaser

The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. This obligation of the purchaser is a factor that can be taken into account by seller and purchaser when negotiating the sale price of the practice.

Other applicable ethical standards

Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client for all matters pending at the time of the sale. These include, for example, the seller's ethical obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 4-1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see rule 4-1.7 regarding conflicts and see the terminology section of the preamble for the definition of informed consent); and the obligation to protect information relating to the representation ~~(~~[see rules 4-1.6, 4-1.8(b), and 4-1.9(b) and (c)~~)~~]. If the terms of the sale involve the division between purchaser and seller of fees from matters that arise subsequent to the sale, the fee-division

provisions of rule 4-1.5 must be satisfied with respect to such fees. These provisions will not apply to the division of fees from matters pending at the time of sale.

If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see rule 4-1.16).

Applicability of this rule

This rule applies, among other situations, to the sale of a law practice by representatives of a lawyer who is deceased, disabled, or has disappeared. It is possible that a nonlawyer, who is not subject to the Rules of Professional Conduct, might be involved in the sale. When the practice of a lawyer who is deceased, is disabled, or has disappeared is being sold, the notice required by subdivision (b) of this rule must be given by someone who is legally authorized to act on the selling lawyer's behalf, such as a personal representative or a guardian. This is because the sale of a practice and transfer of representation involve legal rights of the affected clients.

Bona fide admission to, withdrawal from, or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

4-2. COUNSELOR
RULE 4-2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) Definition. A lawyer serves as a third-party neutral when the lawyer assists 2 or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) Communication With Unrepresented Parties. A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Comment

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution. A Florida Bar member who is a

certified or court-appointed mediator is governed by the applicable law and rules relating to certified or court-appointed mediators.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) *Trust Account Required; Commingling Prohibited*. A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.

(2) *Compliance With Client Directives*. Trust funds may be separately held and maintained other than in a bank or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) *Safe Deposit Boxes*. If a member of the bar uses a safe deposit box to store trust funds or property, the member shall advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property upon which the lawyer has a valid lien for

services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used herein, the term:

(A) "~~n~~Nominal or short term" describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer

has determined cannot earn income for the client or third person in excess of the costs to secure the income~~:~~.

(B) "Foundation" means The Florida Bar Foundation, Inc.~~;~~.

(C) "IOTA account" means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons~~;~~.

(D) "Eligible Institution" means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) "Interest or dividend-bearing trust account" means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. An open- end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and have total assets of at least $250 million. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida shall be deposited into one

or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds*. The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of such good faith judgment.

(4) *Notice to Foundation*. Lawyers or law firms shall advise the Foundation, at Post Office Box 1553, Orlando, Florida 32802-1553, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address;

and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) Remittance and Reporting Instructions. Eligible institutions shall:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts*. The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure*. The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation shall, upon an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter shall not receive benefit from interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When an attorney's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, such funds or property shall be so

designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as the lawyer's trust property. If a missing beneficial owner is located, the trust funds or property shall be paid over or delivered to the beneficial owner if the owner is then entitled to receive the same. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners after being designated as such shall, after diligent search and inquiry fail to identify the beneficial owner or owner's address, be disposed of as provided in applicable Florida law.

(j) Disbursement Against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients owning trust account funds subject to possibly being affected. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled, and credited to the lawyer's trust account. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit:

(1) when the deposit is made by certified check or cashier's check;

(2) when the deposit is made by a check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument issued by a

bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(4) when the deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

(5) when the deposit is made by a check issued by the United States, the State of Florida, or any agency or political subdivision of the State of Florida;

(6) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, such a disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, if the lawyer accepting any such check personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.

(k) Overdraft Protection Prohibited. An attorney shall not authorize overdraft protection for any account that contains trust funds.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the

possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. See *Arnold, Matheny and Eagan, P.A.* v. *First American Holdings, Inc.*, 982 So.2d 628 (Fla. 2008).

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

CHAPTER 10. RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW
SUBCHAPTER 10-6. PROCEDURES FOR INVESTIGATION
RULE 10-6.2 SUBPOENAS

(a) Issuance by Court. Upon receiving a written application of the chair of the standing committee or of a circuit committee or bar counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the chief justice for the attendance of any person or production of books and records or both before counsel or the investigating circuit committee or any member thereof at the time and place designated in such application. ~~Such subpoenas shall be returnable to the circuit court of the residence or place of business of the person subpoenaed.~~ A like subpoena shall issue upon application by any person or entity under investigation.

(b) Failure to Comply. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Supreme Court of Florida or by the circuit court of the circuit ~~to~~in which the subpoena ~~is returnable~~was issued or where the contemnor may be found~~. The circuit court to which the subpoena is returnable shall have power to enter~~ by such orders as may be necessary for the enforcement of the subpoena.

RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

(a) Circuit Committee Action. Upon concluding its investigation, the circuit committee shall ~~forward a~~ report to bar counsel regarding the disposition of those cases closed, those cases where a cease and desist affidavit has been accepted, those cases where a cease and desist affidavit with monetary penalty has been recommended, and those cases where litigation is recommended. A majority of those present is required for all circuit committee recommendations; however, the vote may be taken by mail or telephone rather than at a formal meeting. All recommendations for a cease and desist affidavit with monetary penalty shall be reviewed by the standing committee for final approval. All recommendations for litigation under these rules shall be reviewed by the standing committee and a designated reviewer for final approval prior to initiating litigation.

(b) Action by Bar Counsel. Bar counsel shall review the disposition reports of the circuit committee. If bar counsel objects to any action taken by the circuit committee, bar counsel shall forward such objection to the circuit committee within 10 days of receipt of the circuit committee report. Bar counsel shall place the action and objection before the standing committee for review at its next scheduled meeting. The standing committee shall review the circuit committee action and the objection, and shall vote on the final disposition of the case. Once a case is closed or a cease and desist affidavit is accepted by the circuit committee or by the standing committee, bar counsel shall inform the complainant and, if contacted, the respondent of the disposition of the complaint.

(c) Review by Designated Reviewer. A designated reviewer shall review recommendations by the standing committee that litigation be initiated. The designated reviewer shall act on the recommendation within 21 days following the mailing date of the notice of standing committee action, otherwise the standing committee action shall become final. If the designated reviewer disagrees with all or any part of the recommendation for litigation, the designated reviewer shall make a report and recommendation to the board of governors and the board will make a final determination regarding the litigation.

10-7. PROCEEDINGS BEFORE A REFEREE
RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF

(a) Filing Complaints. Complaints for civil injunctive relief shall be by petition filed in the Supreme Court of Florida by The Florida Bar in its name.

(b) Petitions for Injunctive Relief. Each such petition shall be processed in the Supreme Court of Florida in accordance with the following procedure:

(1) The petition shall not be framed in technical language but shall with reasonable clarity set forth the facts constituting the unlicensed practice of law. A demand for relief may be included in the petition but shall not be required.

(2) The court, upon consideration of any petition so filed, may issue its order to show cause directed to the respondent commanding the respondent to show cause, if there be any, why the respondent should not be enjoined from the unlicensed practice of law alleged, and further requiring the respondent to file with the court and serve upon UPL staff counsel within 20 days after service on the respondent of the petition and order to show cause a written answer admitting or denying each of the matters set forth in the petition. The legal sufficiency of the petition may, at the option of the respondent, be raised by motion to dismiss filed prior to or at the time of the filing of the answer. The filing of a motion to dismiss prior to the filing of an answer shall postpone the time for the filing of an answer until 10 days after disposition of the motion. The order and petition shall be served upon the respondent in the manner provided for service of process by Florida Rule of Civil Procedure 1.070(b). Service of all other pleadings shall be governed by the provisions of Florida Rule of Civil Procedure 1.080.

(3) Any party may request oral argument upon any question of law raised by the initial pleadings. The court may, in its discretion, set the matter for oral argument upon the next convenient motion day or at such time as it deems appropriate.

(4) If no response or defense is filed within the time permitted, the allegations of the petition shall be taken as true for purposes of that action. The court will then, upon its motion or upon motion of any party, decide the case upon its merits, granting such relief and issuing such order as might be appropriate; or it may refer the petition for further proceedings according to rule 10-7.1(b)(6).

(5) If a response or defense filed by a respondent raises no issue of material fact, any party, upon motion, may request summary judgment and the court may rule thereon as a matter of law.

(6) The court may, upon its motion or upon motion of any party, enter a judgment on the pleadings or refer questions of fact to a referee for determination.

(c) Proceedings Before the Referee. Proceedings before the referee shall be in accordance with the following:

(1) The proceedings shall be held in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the court.

(2) Within 60 days of the order assigning the case to the referee, the referee shall conduct a case management conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference and, if civil penalties are requested, containing a notice to the respondent regarding the respondent's burden to show an inability to pay a civil penalty as set forth elsewhere in these rules.

(3) Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if said refusal were a contempt of that court.

(4) The Florida Rules of Civil Procedure, including those provisions pertaining to discovery, not inconsistent with these rules shall apply in injunctive proceedings before the referee. The powers and jurisdiction generally reposed in the court under those rules may in this action be exercised by the referee. The Florida Bar may in every case amend its petition 1 time as of right, within 60 days after the filing of the order referring the matter to a referee.

(5) Review of interlocutory rulings of the referee may be had by petition to the court filed within 30 days after entry of the ruling complained of. A supporting brief or memorandum of law and a transcript containing conformed copies of pertinent portions of the record in the form of an appendix shall be filed with the court by a party seeking such review. Any opposing party may file a responsive brief or memorandum of law and appendix containing any additional portions of the record deemed pertinent to the issues raised within 10 days thereafter. The petitioner may file a reply brief or memorandum of law within 5 days of the date of service of the opposing party's responsive brief or memorandum of law. Any party may request oral argument at the time that party's brief or memorandum of law is filed or due. Interlocutory review hereunder shall not stay the cause before the referee unless the referee or the court on its motion or on motion of any party shall so order.

(d) Referee's Report.

(1) *Generally*. At the conclusion of the hearing, the referee shall file a written report with the court stating findings of fact, conclusions of law, a statement of costs incurred and recommendations as to the manner in which costs should be taxed as provided elsewhere in this chapter, and a recommendation for final disposition of the cause which may include the imposition of a civil penalty not to exceed $1000 per incident and a recommendation for restitution as provided elsewhere in this chapter. The original record shall be filed with the report. Copies of the referee's report shall be served upon all parties by the referee at the time it is filed with the court.

(2) *Costs*. The referee shall have discretion to recommend the assessment of costs. Taxable costs of the proceeding shall include only:

(A) investigative costs;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee; and

(H) travel and out-of-pocket expenses of counsel in the proceedings, including those of the respondent if acting as counsel; and

(I) any other costs which may properly be taxed in civil litigation.

(3) *Restitution*. The referee shall have discretion to recommend that the respondent be ordered to pay restitution. In such instances, the amount of restitution shall be specifically set forth in the referee's report and shall not exceed the amount paid to respondent by complainant(s). The referee's report shall also state the name(s) of the complainant(s) to whom restitution is to be made, the amount of restitution to be made, and the date by which it shall be completed. The referee shall have discretion over the timing of payments and over how those payments are to be distributed to multiple complainants. In determining the amount of restitution to be paid to complainant(s), the referee shall consider testimony and/or any documentary evidence that shows the amount paid to respondent by complainant(s) including:

(A) cancelled checks;

(B) credit card receipts;

(C) receipts from respondent; and

(D) any other documentation evidencing the amount of payment.

The referee shall also have discretion to recommend that restitution shall bear interest at the legal rate provided for judgments in this state. Nothing in this section shall preclude an individual from seeking redress through civil proceedings to recover fees or other damages.

(4) *Civil Penalty*. Except in cases where the parties have entered into a stipulated injunction, prior to recommending the imposition of a civil penalty, the referee shall determine whether the respondent has the ability to pay the penalty. The respondent has the burden to show the inability to pay a penalty. A respondent asserting an inability to pay shall file with the referee a completed affidavit containing the statutory financial information required to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury. In making a determination of whether the respondent has the ability to pay a penalty, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination. If the referee finds that the respondent does not have the ability to pay a penalty, this shall be stated in the referee's report along with a recitation of the evidence upon which the referee made this finding. If the referee finds that the respondent does have the ability to pay a penalty, this shall be stated in the referee's report along with a recitation of the evidence upon which the referee made this finding.

(5) *Stipulated Injunction*. Should the parties enter into a stipulated injunction prior to the hearing, the stipulation shall be filed with the referee. The referee may approve the stipulation or reject the stipulation and schedule a hearing as provided elsewhere in these rules. If accepted, the stipulation and original record shall then be filed with the court for final approval of the stipulation and entry of an injunction. A written report as described in rule 10-7.1(d)(1) shall be filed by the referee along with the stipulation. The respondent may agree to pay restitution in the stipulation. In such instances the amount of

restitution, to whom it shall be made, how payments are to be made, the date by which it shall be completed, and whether interest as provided elsewhere in this chapter will be paid, shall be specifically set forth in the stipulation.

(6) *Timing of Payment*. Should the referee recommend the imposition of restitution, costs, or a civil penalty, the respondent shall pay the award in the following order: restitution, costs, civil penalty.

(e) Record.

(1) *Contents*. The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(2) *Preparation and Filing*. The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(3) *Supplementing or Removing Items from the Record*. The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(f) Review by the Supreme Court of Florida.

(1) Objections to the report of the referee shall be filed with the court by any party aggrieved, within 30 days after the filing of the report, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

If the objector desires, a brief or memorandum of law in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief or memorandum of law within 20 days of service of the objector's brief or memorandum of law. The objector may file a reply brief or memorandum of law within ~~10~~20 days of service of the opposing party's responsive brief or memorandum of law. Oral argument will be allowed at the court's discretion and will be governed by the provisions of the Florida Rules of Appellate Procedure.

(2) Upon the expiration of the time to file objections to the referee's report, the court shall review the report of the referee, together with any briefs or memoranda of law or objections filed in support of or opposition to such report. After review, the court shall determine as a matter of law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, whether restitution should be ordered, whether civil penalties should be awarded, and whether further relief shall be granted. Any order of the court that contains the imposition of restitution or civil penalties shall contain a requirement that the respondent send the restitution or penalty to the UPL Department of The Florida Bar. The restitution shall be made payable to the complainant(s) specified in the court's order. The Florida Bar shall remit all restitution received to the complainant(s). If The Florida Bar cannot locate the complainant(s) within 4 months, the restitution shall be returned to the respondent. The civil penalty shall be made payable to the Supreme Court of Florida. The Florida Bar shall remit all penalties received to the court. In the event respondent fails to pay the restitution as ordered by the court, The Florida Bar is authorized to file a petition for indirect criminal contempt as provided elsewhere in this chapter.

(g) Issuance of Preliminary or Temporary Injunction. Nothing set forth in this rule shall be construed to limit the authority of the court, upon proper application, to issue a preliminary or temporary injunction, or at any stage of the proceedings to enter any such order as the court deems proper when public harm or the possibility thereof is made apparent to the court, in order that such harm may be summarily prevented or speedily enjoined.

RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT

(a) Petitions for Indirect Criminal Contempt. Nothing set forth herein shall be construed to prohibit or limit the right of the court to issue a permanent injunction in lieu of or in addition to any punishment imposed for an indirect criminal contempt.

(1) Upon receiving a sworn petition of the president, executive director of The Florida Bar, or the chair of the standing committee alleging facts indicating that a person, firm, or corporation is or may be unlawfully practicing law or has failed to pay restitution as provided elsewhere in this chapter, and containing a prayer for a contempt citation, the court may issue an order directed to the respondent, stating the essential allegations charged and requiring the respondent to appear before a referee appointed by the court to show cause why the respondent should not be held in contempt of this court for the unlicensed practice of law or for the failure to pay restitution as ordered. The referee shall be a circuit judge of the state of Florida. The order shall specify the time and place of the hearing, and a reasonable time shall be allowed for preparation of the defense after service of the order on the respondent.

(2) The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer such order by way of explanation or defense. All motions and the answer shall be in writing. A respondent's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(b) Indigency of Respondent. Any respondent who is determined to be indigent by the referee shall be entitled to the appointment of counsel.

(1) *Affidavit.* A respondent asserting indigency shall file with the referee a completed affidavit containing the statutory financial information required to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury.

(2) *Determination*. After reviewing the affidavit and questioning the respondent, the referee shall make one of the following determinations: the respondent is indigent; or the respondent is not indigent.

In making this determination, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination.

(c) Proceedings Before the Referee. Proceedings before the referee shall be in accordance with the following:

(1) Venue for the hearing before the referee shall be in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the court.

(2) The court or referee may issue an order of arrest of the respondent if the court or referee has reason to believe the respondent will not appear in response to the order to show cause. The respondent shall be admitted to bail in the manner provided by law in criminal cases.

(3) The respondent shall be arraigned at the time of the hearing before the referee, or prior thereto upon request. A hearing to determine the guilt or innocence of the respondent shall follow a plea of not guilty. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against the respondent. The respondent may testify in the respondent's own defense. No respondent may be compelled to testify. A presumption of innocence shall be accorded the respondent. The Florida Bar, which shall act as prosecuting authority, must prove guilt of the respondent beyond a reasonable doubt.

(4) Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if said refusal were a contempt of that court.

(5) The referee shall hear all issues of law and fact and all evidence and testimony presented shall be transcribed.

(6) At the conclusion of the hearing, the referee shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty, and the costs of prosecution, including investigative costs and restitution, if any, shall be included and entered in the judgment rendered against the respondent. The amount of restitution shall be specifically set forth in the judgment and shall not exceed the amount paid to respondent by complainant(s). The judgment shall also state the name of the complainant(s) to whom restitution is to be made, the amount of restitution to be made, and the date by which it shall be completed. The referee shall have discretion over the timing of payments, over how those payments are to be distributed to multiple complainant(s), and whether restitution shall bear interest at the legal rate provided for judgments in this state. In determining the amount of restitution to be paid to complainant(s), the referee shall consider any documentary evidence that shows the amount paid to respondent by complainant(s), including cancelled checks, credit card receipts, receipts from respondent, and any other documentation evidencing the amount of payment. Nothing in this section shall preclude an individual from seeking redress through civil proceedings to recover fees or other damages.

(7) Prior to the pronouncement of a recommended sentence upon a judgment of guilty, the referee shall inform the respondent of the accusation and judgment and afford the opportunity to present evidence of mitigating circumstances. The recommended sentence shall be pronounced in open court and in the presence of the respondent.

(d) Record.

(1) *Contents.* The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(2) *Preparation and Filing*. The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(3) *Supplementing or Removing Items from the Record*. The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(e) Review by the Supreme Court of Florida. The judgment and recommended sentence, upon a finding of "guilty," together with the entire record of proceedings shall then be forwarded to this court for approval, modification, or rejection based upon the law. The respondent may file objections, together with a supporting brief or memorandum of law, to the referee's judgment and recommended sentence within 30 days of the date of filing with the court of the referee's judgment, recommended sentence, and record of proceedings, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

The Florida Bar may file a responsive brief or memorandum of law within 20 days after service of respondent's brief or memorandum of law. The respondent may file a reply brief or memorandum of law within ~~10~~20 days after service of The Florida Bar's responsive brief or memorandum of law.

(f) Fine or Punishment. The punishment for an indirect criminal contempt under this chapter shall be by fine, not to exceed $2500, imprisonment of up to 5 months, or both.

(g) Costs and Restitution. The court may also award costs and restitution.

10-8. CONFIDENTIALITY
RULE 10-8.1 FILES

(a) Files Are Property of Bar. All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records in trials and other proceedings under these rules, except those unlicensed practice of law matters conducted in county or circuit courts, are property of The Florida Bar. All of those matters shall be confidential and shall not be disclosed except as provided in these rules. When disclosure is permitted under these rules, it shall be limited to information concerning the status of the proceedings and any information that is part of the UPL record as defined in these rules.

(b) UPL Record. The UPL record shall consist of the record before a circuit committee, the record before a referee, the record before the Supreme Court of Florida, and any reports, correspondence, papers, and recordings and transcripts of hearings and transcribed testimony furnished to, served on, or received from the respondent or the complainant. The record before the circuit committee shall consist of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of circuit committee meetings or transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The record before a referee and the record before the Supreme Court of Florida shall include all items properly filed in the cause including pleadings, transcripts of testimony, exhibits in evidence, and the report of the referee.

(c) Limitations on Disclosure. Any material provided to or promulgated by The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the UPL record, that portion of the UPL record may be sealed by the circuit committee chair, the referee, or the court.

(d) Disclosure of Information. Unless otherwise ordered by this court or the referee in proceedings under this rule, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Response to Inquiry. Representatives of The Florida Bar, authorized by the board of governors, shall reply to inquiries regarding a pending or closed unlicensed practice of law investigation as follows:

(1) *Cases Opened Prior To November 1, 1992*. Cases opened prior to November 1, 1992, shall remain confidential.

(2) *Cases Opened On or After November 1, 1992*. In any case opened on or after November 1, 1992, the fact that an unlicensed practice of law investigation is pending and the status of the investigation shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(3) *Recommendations of Circuit Committee*. The recommendation of the circuit committee as to the disposition of an investigation opened on or after November 1, 1992, shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(4) *Final Action by Circuit Committee, Standing Committee, Designated Reviewer, and Bar Counsel*. The final action on investigations opened on or after November 1, 1992, shall be public information. The UPL record in cases opened on or after November 1, 1992, that are closed by the circuit committee, the standing committee, or bar counsel as provided elsewhere in these rules, cases where a cease and desist affidavit has been accepted, and cases where a litigation recommendation has been approved by a designated reviewer as provided elsewhere in these rules, shall be public information and may be provided upon specific inquiry except that information that remains confidential under rule 10-8.1(c). The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(f) Production of UPL Records Pursuant to Subpoena. The Florida Bar, pursuant to a valid subpoena issued by a regulatory agency, may provide any documents that are a portion of the UPL record even if otherwise deemed confidential under these rules. The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(g) Notice to Judges. Any judge of a court of record may be advised as to the status of a confidential unlicensed practice of law case and may be provided with a copy of the UPL record. The judge shall maintain the confidentiality of the matter.

(h) Response to False or Misleading Statements. If public statements that are false and misleading are made about any UPL case, The Florida Bar may make any disclosure necessary to correct such false or misleading statements.

(i) Providing Otherwise Confidential Material. Nothing contained herein shall prohibit The Florida Bar from providing otherwise confidential material as provided in rule 10-3.2(e).

CHAPTER 20. FLORIDA REGISTERED PARALEGAL PROGRAM
20-3. ELIGIBILITY REQUIREMENTS
RULE 20-3.1 REQUIREMENTS FOR REGISTRATION

In order to be a Florida Registered Paralegal under this chapter, an individual must meet 1 of the following requirements.

(a) Educational and Work Experience Requirements. A person may become a Florida Registered Paralegal by meeting 1 of the following education and paralegal work experience requirements:

(1) a bachelor's degree in paralegal studies from an approved paralegal program, plus a minimum of 1 year of paralegal work experience;

(2) a bachelor's degree or higher degree other than a juris doctorate from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 3 years of paralegal work experience;

(3) an associate's degree in paralegal studies from an approved paralegal program, plus a minimum of 2 years of paralegal work experience;

(4) an associate's degree from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 4 years of paralegal work experience; or

(5) a juris doctorate degree from an American Bar Association accredited institution, plus a minimum of 1 year of paralegal work experience.

(b) Certification. A person may become a Florida Registered Paralegal by obtaining 1 of the following certifications:

(1) successful completion of the Paralegal Advanced Competency Exam (PACE certification as offered by the National

Federation of Paralegal Associations "NFPA") and good standing with NFPA; or

(2) successful completion of the Certified Legal Assistant/Certified Paralegal examination (CLA/CP certification as offered by the National Association of Legal Assistants “NALA”) and good standing with NALA.

(c) Grandfathering. A person who does not meet the requirements of (a) or (b) may become a Florida Registered Paralegal by providing attestation from an employing or supervising attorney(s) that the person has paralegal work experience as defined elsewhere in these rules for 5 of the 8 years immediately preceding the date of such attestation. Any such attestation must be received by The Florida Bar not later than 3 years after the effective date of this chapter.

20-7. CODE OF ETHICS AND RESPONSIBILITY
RULE 20-7.1 GENERALLY

A Florida Registered Paralegal shall adhere to the following Code of Ethics and Responsibility:

(a) Disclosure. A Florida Registered Paralegal shall disclose his or her status as a Florida Registered Paralegal at the outset of any professional relationship with a client, ~~attorneys~~lawyers, a court or administrative agency or personnel thereof, and members of the general public. Use of the initials FRP meets the disclosure requirement only if the title paralegal also appears. For example, J. Doe, FRP, Paralegal. Use of the word "paralegal" alone also complies.

(b) Confidentiality and Privilege. A Florida Registered Paralegal shall preserve the confidences and secrets of all clients. A Florida Registered Paralegal must protect the confidences of a client, and it shall be unethical for a Florida Registered Paralegal to violate any statute or rule now in effect or hereafter to be enacted controlling privileged communications.

(c) Appearance of Impropriety or Unethical Conduct. A Florida Registered Paralegal should understand the attorney's Rules of Professional Conduct and this code in order to avoid any action that would involve the attorney in a violation of the rules or give the appearance of professional impropriety. It is the obligation of the Florida Registered Paralegal to avoid conduct that would cause the lawyer to be unethical or even appear to be unethical, and loyalty to the lawyer is incumbent upon the Florida Registered Paralegal.

(d) Prohibited Conduct. A Florida Registered Paralegal should not:

(1) establish attorney-client relationships, accept cases, set legal fees, give legal opinions or advice, or represent a client before a court or other tribunal, unless authorized to do so by the court or tribunal;

(2) engage in, encourage, or contribute to any act that could constitute the unlicensed practice of law;

(3) engage in the practice of law;

(4) perform any of the duties that attorneys only may perform nor do things that attorneys themselves may not do; or

(5) act in matters involving professional legal judgment since the services of an attorney are essential in the public interest whenever the exercise of such judgment is required.

(e) Performance of Services. A Florida Registered Paralegal must act prudently in determining the extent to which a client may be assisted without the presence of an attorney. A Florida Registered Paralegal may perform services for an attorney in the representation of a client, provided:

(1) the services performed by the paralegal do not require the exercise of independent professional legal judgment;

(2) the attorney is responsible for the client, maintains a direct relationship with the client, and maintains control of all client matters;

(3) the attorney supervises the paralegal;

(4) the attorney remains professionally responsible for all work on behalf of the client and assumes full professional responsibility for the work product, including any actions taken or not taken by the paralegal in connection therewith; and

(5) the services performed supplement, merge with, and become the attorney's work product.

(f) Competence. A Florida Registered Paralegal shall work continually to maintain integrity and a high degree of competency throughout the legal profession.

(g) Conflict of Interest. A Florida Registered Paralegal who was employed by an opposing law firm has a duty not to disclose any information relating to the representation of the former firm's clients and must disclose the fact of the prior employment to the employing attorney.

(h) Reporting Known Misconduct. A Florida Registered Paralegal having knowledge that another Florida Registered Paralegal has committed a

violation of this chapter or code shall inform The Florida Bar of the violation.

APPENDIX B

SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

Housekeeping

October 15, 2010

CHAPTER 3 RULES OF DISCI-PLINE * * * SUBCHAPTER 3-7. PROCEDURES *** * *** **RULE 3-7.1 CONFIDENTIALITY** **(a) Scope of Confidentiality.** [no change] **(b) Public Record.** [no change] **(c) Circuit Court Proceedings.** [no change] **(d) Limitations on Disclosure.** Any material provided to The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida. <u>The procedure for maintaining the required confidentiality shall be as set forth in subdivision (m) below.</u> **(e) Response to Inquiry.** [no change] **(f) Notice to Law Firms.** [no change] **(g) Production of Disciplinary Records Pursuant to Subpoena.** [no change] **(h) Notice to Judges.** [no change] **(i) Evidence of Crime.** [no change] **(j) Chemical Dependency and Psychological Treatment.** [no change]	The proposed rule meshes the bar rules with rule 2.420, Rules of Judicial Administration dealing with privacy issues in otherwise public records, ensures the bar is following procedures established by Florida's courts.

(k) Response to False or Misleading Statements. [no change] **(*l*) Disclosure by Waiver of Respondent.** [no change] change] **(m) Maintaining Confidentiality Required by Rule or Law.** The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Jud. Admin. 2.420. It shall be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that such documents or information contain material that is exempt from disclosure under applicable rule or law and to request that such exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.	Establishes that The Florida Bar follows federal and state confidentiality and exemption laws.

* * * **RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES** **(a) Screening of Inquiries.** Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. If bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under ~~4-1.5 of the Rules Regulating The Florida Bar~~these rules, bar counsel may, with the consent of the complainant and respondent, refer the matter to ~~the appropriate circuit arbitration committee for arbitration~~The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14. If bar counsel determines that the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline, bar counsel may decline to pursue the inquiry. A decision by bar counsel not to pursue an inquiry shall not preclude further action or review under the Rules Regulating The Florida Bar. The complainant and respondent shall be notified of a decision not to pursue an inquiry and shall be given the reasons therefor. **(b) Complaint Processing and Bar Counsel Investigation.** [no change] **(c) Form for Complaints.** [no change] **(d) Dismissal of Disciplinary Cases.** [no change] **(e) Diversion to Practice and Professionalism Enhancement Programs.** [no change] **(f) Referral to Grievance Committees.** [no change] **(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff.** [no change]	Non-substantive edit. Non-substantive edit. Reflects the current name of the program.

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES **(a) Notice of Hearing.** [no change] **(b) Complaint Filed With Grievance Committee.** v **(c) Investigation.** [no change] **(d) Conduct of Proceedings.** [no change] **(e) No Delay for Civil or Criminal Proceedings.** [no change] **(f) Counsel and Investigators.** [no change] **(g) Quorum, Panels, and Vote.** [no change] **(h) Rights and Responsibilities of the Respondent.** [no change] **(i) Rights of the Complaining Witness.** [no change] **(j) Finding of No Probable Cause.** [no change] **(k) Letter Reports in No Probable Cause Cases.** [no change] **(*l*) Preparation, Forwarding, and Review of Grievance Committee Complaints.** If a grievance committee <u>or the board of governors</u> finds probable cause, the bar counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be approved by the	Adds board of governors to reflect the authority of the board under rule 3-7.5(c)(7) to find probable cause upon review of a grievance committee finding

member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes accordingly. If bar counsel does not agree with the changes, the matter shall be referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or is not returned to the grievance committee for further action, the formal complaint shall be promptly forwarded to and reviewed by staff counsel. ~~who~~ Staff counsel shall file the formal complaint~~,~~ and furnish a copy ~~of the formal complaint~~ to the respondent. Staff counsel shall request the Supreme Court of Florida assign a referee, or order the chief judge of the circuit where venue is lodged to assign a referee, to try the cause. A copy of the record shall be made available to the respondent at the respondent's expense. If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action. **(m) Recommendation of Admonishment for Minor Misconduct.** [no change] **(n) Rejection of Admonishment.** [no change] **(*o*) Recommendation of Diversion to Remedial Programs.** [no change]	Consistent with recent amendments to rule 3-7.4(*l*) (SC08-1890), conforms the rule to the practice of the court and adds the option for the chief judge of the circuit to assign a referee.
~~**(p) Preparation, Review, and Filing of Complaint.** When a grievance committee formal complaint is not referred to the disciplinary review committee, or returned to the grievance committee, staff counsel shall sign the complaint and file the same in the Supreme Court of Florida, serve a copy on the respondent, and request the Supreme Court of Florida to assign a referee to try the cause. If probable cause is found by the board, bar counsel will prepare the formal complaint.~~	Eliminates redundancy and incorporates all matters involving filing of formal complaints after a finding of probable cause by a grievance committee or the board of governors into subdivision (*l*).

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS **(a) Review by the Designated Reviewer.** [no change] **(b) Review of Grievance Committee Matters.** [no change] **(c) Board Action on Review of Designated Reviewer Recommendations.** [no change] **(d) Notice of Board Action.** [no change] **(e) Finding of No Probable Cause.** [no change] **(f) Control of Proceedings.** [no change] **(g) Filing Service on Board of Governors.** All matters to be filed with or served upon the board shall be addressed to the board of governors and filed with the executive director. The executive director or his designees shall be the custodians of the official records of The Florida Bar.	Need to clarify and avoid any objections to business record affidavits of bar employees in referee proceedings and other circumstances where records must be authenticated or produced by the bar's records custodian(s).

RULE 3-7.6 PROCEDURES BEFORE A REFEREE **(a) Referees.** [no change] **(b) Trial by Referee.** [no change] **(c) Pretrial Conference.** [no change] **(d) Venue.** [no change] **(e) Style of Proceedings.** All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, Complainant, v. …..(name of respondent)….., Respondent," and "In The Supreme Court of Florida (Before a Referee)." **(f) Nature of Proceedings.** [no change] **(g) Bar Counsel.** [no change] **(h) Pleadings.** Pleadings may be informal and shall comply with the following requirements: (1) *Complaint; Consolidation and Severance*. [no change] (2) *Answer and Motion*. [no change] (3) *Reply*. [no change] (4) *Disposition of Motions*. [no change] (5) *Filing and Service of Pleadings*. [no change] (6) *Amendment*. [no change]	Non-substantive edit - conforms to Style Guide.

(7) *Expediting the Trial*. [no change] (8) *Disqualification of Referee*. ~~Upon motion of either party, a~~A referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification, the chief ~~justice~~judge of the circuit in which the original referee resided shall appoint a successor referee from that same circuit. **(i) Notice of Final Hearing.** [no change] **(j) The Respondent.** [no change] **(k) Complaining Witness.** [no change] **(*l*) Parol Evidence.** [no change] **(m) Referee's Report.** [no change] **(n) The Record.** [no change] **(*o*) Plea of Guilty by Respondent.** [no change] **(p) Cost of Review or Reproduction.** [no change] **(q) Costs.** [no change] **Court Comment** [no change] **Comment** [no change]	When a referee is disqualified, currently rule 3-7.6 requires the matter to go back to the Chief Justice of the Florida Supreme Court, who then orders the chief judge of the circuit to appoint a successor referee. The proposed amendment would save time for the parties and the courts by eliminating this extra step in the process.

*** * *** **CHAPTER 4 RULES OF PROFESSIONAL CONDUCT** SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP *** * *** **RULE 4-1.6 CONFIDENTIALITY OF INFORMATION** **(a) Consent Required to Reveal Information.** [no change] **(b) When Lawyer Must Reveal Information.** [no change] **(c) When Lawyer May Reveal Information.** **(d) Exhaustion of Appellate Remedies.** **(e) Limitation on Amount of Disclosure.** **Comment** The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights. This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(~~b~~c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients. [no further change]	Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9.

* * * **RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE** **(a) Imputed Disqualification of All Lawyers in Firm.** [no change] **(b) Former Clients of Newly Associated Lawyer.** When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter. **(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer.** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless: (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and (2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter. **(d) Waiver of Conflict.** [no change] **(e) Government Lawyers.** [no change] **Comment** **Definition of "firm"** [no change]	Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9. Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9.

Principles of imputed disqualification [no change] **Lawyers moving between firms** [no change] **Confidentiality** Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients. Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought. Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by rules 4-1.6 and 4-1.9(b) and (c). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict. Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9. **Adverse positions** [no change]	Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9.

RULE 4-1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES **(a) Representation of Private Client by Former Public Officer or Employee.** A lawyer who has formerly served as a public officer or employee of the government: (1) is subject to rule 4-1.9(b) and (c); and (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. **(b) Representation by Another Member of the Firm.** [no change] **(c) Use of Confidential Government Information.** [no change] **(d) Limits on Participation of Public Officer or Employee.** [no change] **(e) Matter Defined.** **Comment** [no change]	Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9.

RULE 4-1.12 FORMER JUDGE OR ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral. [no change]

(b) Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral. [no change]

(c) Imputed Disqualification of Law Firm. [no change]

(d) Exemption for Arbitrator as Partisan. [no change]

Comment

This rule generally parallels rule 4-1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 4-1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2), and C of Florida's Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not "act as a lawyer in a proceeding in which [the lawyer] has served as a judge or in any other proceeding related thereto." Although phrased differently from this rule, those rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the

proceedings give their informed consent, confirmed in writing. See terminology. Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See rule 4-2.4. Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 4-1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subdivision (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subdivision are met. Requirements for screening procedures are stated in terminology. Subdivision (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified. Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. A Florida Bar member who is a certified <u>or court-appointed</u> mediator is governed by the applicable law and rules relating to certified <u>and court-appointed</u> mediators.	Clarifies that court-appointed mediators are governed by applicable law and rules relating to court-appointed mediators to notify Florida Bar members who are court-appointed mediators that they should look to law and mediator rules to determine the appropriate course of conduct as set forth in law and mediator ethics rules.

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. [no change]

(b) Notice to Clients. [no change]

(c) Court Approval Required. [no change]

(d) Client Objections. [no change]

(e) Consummation of Sale. [no change]

(f) Existing Fee Contracts Controlling. [no change]

Comment

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. In accordance with the requirements of this rule, when a lawyer or an entire firm sells the practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See rules 4-5.4 and 4-5.6.

The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Similarly, a violation does not occur merely because a court declines to approve the substitution of counsel in the cases of a number of clients who could not be served with written notice of the proposed sale.

Sale of entire practice or entire area of practice [no change] **Client confidences, consent, and notice** [no change] **Fee arrangements between client and purchaser** [no change] **Other applicable ethical standards** Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client for all matters pending at the time of the sale. These include, for example, the seller's ethical obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 4-1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see rule 4-1.7 regarding conflicts and see the terminology section of the preamble for the definition of informed consent); and the obligation to protect information relating to the representation ~~([~~see rules 4-1.6, 4-1.8(b), and 4-1.9(b) and (c)~~)~~]. If the terms of the sale involve the division between purchaser and seller of fees from matters that arise subsequent to the sale, the fee-division provisions of rule 4-1.5 must be satisfied with respect to such fees. These provisions will not apply to the division of fees from matters pending at the time of sale. If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see rule 4-1.16). **Applicability of this rule** [no change]	Housekeeping edit to add reference to new subdivision (c) of rule 4-1.9.

* * * SUBCHAPTER 4-2. COUNSELOR *** * *** **RULE 4-2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL** **(a) Definition.** [no change] **(b) Communication With Unrepresented Parties.** [no change] **Comment** Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court. The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution. A Florida Bar member who is a certified <u>or court-appointed</u> mediator is governed by the applicable law and rules relating to certified <u>or court-appointed</u> mediators. Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may	Clarifies that court-appointed mediators are governed by applicable law and rules relating to court-appointed mediators to notify Florida Bar members who

experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute resolution process selected. A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.	are court-appointed mediators that they should look to law and mediator rules to determine the appropriate course of conduct as set forth in law and mediator ethics rules.

* * * **CHAPTER 5. RULES REGULATING TRUST ACCOUNTS** SUBCHAPTER 5-1. GENERALLY **RULE 5-1.1 TRUST ACCOUNTS**	
(a) Nature of Money or Property Entrusted to Attorney. [no change]	
(b) Application of Trust Funds or Property to Specific Purpose. [no change]	
(c) Liens Permitted. [no change]	
(d) Controversies as to Amount of Fees. [no change]	
(e) Notice of Receipt of Trust Funds; Delivery; Accounting. [no change]	
(f) Disputed Ownership of Trust Funds. [no change]	
(g) Interest on Trust Accounts (IOTA) Program.	
(1) *Definitions*. As used herein, the term:	
(A) "~~n~~Nominal or short term" describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income~~:~~.	Non-substantive edit. Non-substantive edit.
(B) "Foundation" means The Florida Bar Foundation, Inc.~~:~~.	Non-substantive edit.
(C) "IOTA account" means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons~~:~~.	Non-substantive edit.
(D) "Eligible Institution" means any bank or savings and loan association	

authorized by federal or state laws to do business in Florida and insured by the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) "Interest or dividend-bearing trust account" means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. An open- end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and have total assets of at least $250 million. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(2) – (7) [no change]

(h) Interest on Funds That Are Not Nominal or Short-Term. [no change]

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. [no change]

(j) Disbursement Against Uncollected Funds. [no change]

(k) Overdraft Protection Prohibited. [no change]

Comment	
A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person. Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed. Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the	

client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated. The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. See *Arnold, Matheny and Eagan, P.A.* v. *First American Holdings, Inc.*, 982 So.2d 628 (Fla. 2008). The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule. Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections. Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account. The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies	The Florida Supreme Court's decision in *Arnold, Matheny and Eagan, P.A.* v. *First American Holdings, Inc.*, 982 So.2d 628 (Fla. 2008) prompted a reference in the Comment to Rule 5-1.1 to put lawyers on notice that their trust accounts may now be the proper target of garnishment actions. This reference serves as a notice to lawyers of the applicable court decision, but leaves the interpretation of the law to the discretion of the individual lawyer.

to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.	

CHAPTER 10 RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW * * * SUBCHAPTER 10-6. PROCEDURES FOR INVESTIGATION *** * *** **RULE 10-6.2 SUBPOENAS** **(a) Issuance by Court.** Upon receiving a written application of the chair of the standing committee or of a circuit committee or bar counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the chief justice for the attendance of any person or production of books and records or both before counsel or the investigating circuit committee or any member thereof at the time and place designated in such application. ~~Such subpoenas shall be returnable to the circuit court of the residence or place of business of the person subpoenaed.~~ A like subpoena shall issue upon application by any person or entity under investigation. **(b) Failure to Comply.** Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Supreme Court of Florida or by the circuit court of the circuit ~~to~~in which the subpoena ~~is returnable~~was issued or where the contemnor may be found~~. The circuit court to which the subpoena is returnable shall have power to enter~~ by such orders as may be necessary for the enforcement of the subpoena.	Conforms rule to rules of civil procedure regarding return of subpoena. Clarifies which court has authority to enforce a subpoena. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by such orders necessary for the enforcement of the subpoena. The Supreme Court of Florida or the circuit court of the circuit in which the subpoena was issued or where the contemnor may be found has the authority to issue the order to enforce the subpoena.

RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS **(a) Circuit Committee Action.** Upon concluding its investigation, the circuit committee shall ~~forward a~~ report to bar counsel regarding the disposition of those cases closed, those cases where a cease and desist affidavit has been accepted, those cases where a cease and desist affidavit with monetary penalty has been recommended, and those cases where litigation is recommended. A majority of those present is required for all circuit committee recommendations; however, the vote may be taken by mail or telephone rather than at a formal meeting. All recommendations for a cease and desist affidavit with monetary penalty shall be reviewed by the standing committee for final approval. All recommendations for litigation under these rules shall be reviewed by the standing committee and a designated reviewer for final approval prior to initiating litigation. **(b) Action by Bar Counsel.** [no change] **(c) Review by Designated Reviewer.** [no change]	Removes unnecessary language from the rule to conform to current practice of reporting at the meetings.

SUBCHAPTER 10-7. PROCEEDINGS BEFORE A REFEREE **RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF** **(a) Filing Complaints.** [no change] **(b) Petitions for Injunctive Relief.** [no change] **(c) Proceedings Before the Referee.** [no change] **(d) Referee's Report.** [no change] **(e) Record.** [no change] **(f) Review by the Supreme Court of Florida.** (1) Objections to the report of the referee shall be filed with the court by any party aggrieved, within 30 days after the filing of the report, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules. If the objector desires, a brief or memorandum of law in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief or memorandum of law within 20 days of service of the objector's brief or memorandum of law. The objector may file a reply brief or memorandum of law within ~~10~~20 days of service of the opposing party's responsive brief or memorandum of law. Oral argument will be allowed at the court's discretion and will be governed by the provisions of the Florida Rules of Appellate Procedure. (2) Upon the expiration of the time to file objections to the referee's report, the court shall review the report of the referee, together with any briefs or memoranda of law	At the request of the Clerk of this Court during an in-person meeting with bar staff, the proposed changes are proposed in order to bring the due dates for reply briefs into conformance with the Florida

or objections filed in support of or opposition to such report. After review, the court shall determine as a matter of law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, whether restitution should be ordered, whether civil penalties should be awarded, and whether further relief shall be granted. Any order of the court that contains the imposition of restitution or civil penalties shall contain a requirement that the respondent send the restitution or penalty to the UPL Department of The Florida Bar. The restitution shall be made payable to the complainant(s) specified in the court's order. The Florida Bar shall remit all restitution received to the complainant(s). If The Florida Bar cannot locate the complainant(s) within 4 months, the restitution shall be returned to the respondent. The civil penalty shall be made payable to the Supreme Court of Florida. The Florida Bar shall remit all penalties received to the court. In the event respondent fails to pay the restitution as ordered by the court, The Florida Bar is authorized to file a petition for indirect criminal contempt as provided elsewhere in this chapter. **(g) Issuance of Preliminary or Temporary Injunction.** [no change]	Rules of Appellate Procedure. The current rule is confusing to appellate practitioners who do not normally handle bar UPL matters because the time periods of the current rule differ from established procedures under the Florida Rules of Appellate Procedure. The amendment gives more time to respond.

RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT **(a) Petitions for Indirect Criminal Contempt.** [no change] **(b) Indigency of Respondent.** Any respondent who is determined to be indigent by the referee shall be entitled to the appointment of counsel. (1) *Affidavit*. A respondent asserting indigency shall file with the referee a completed affidavit containing the statutory financial information required to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury. (2) *Determination*. After reviewing the affidavit and questioning the respondent, the referee shall make one of the following determinations: the respondent is indigent~~;~~ or the respondent is not indigent. In making this determination, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination. **(c) Proceedings Before the Referee.** **(d) Record.** **(e) Review by the Supreme Court of Florida.** The judgment and recommended sentence, upon a finding of "guilty," together with the entire record of proceedings shall then be forwarded to this court for approval, modification, or rejection based upon the law. The respondent may file objections, together with a supporting brief or memorandum of law, to the referee's judgment and recommended sentence within 30 days of the date of filing with the court of the referee's judgment, recommended sentence, and record of proceedings, or in the case where a party seeks review of a referee’s denial to supplement or remove an item from the	Editorial.

record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules. The Florida Bar may file a responsive brief or memorandum of law within 20 days after service of respondent's brief or memorandum of law. The respondent may file a reply brief or memorandum of law within ~~10~~20 days after service of The Florida Bar's responsive brief or memorandum of law. **(f) Fine or Punishment.** [no change] **(g) Costs and Restitution.** [no change]	At the request of the Clerk of this Court during an in-person meeting with bar staff, the proposed changes are proposed in order to bring the due dates for reply briefs into conformance with the Florida Rules of Appellate Procedure. The current rule is confusing to appellate practitioners who do not normally handle bar UPL matters because the time periods of the current rule differ from established procedures under the Florida Rules of Appellate Procedure. The amendment gives more time to respond.

* * * SUBCHAPTER 10-8. CONFIDENTIALITY **RULE 10-8.1 FILES** **(a) Files Are Property of Bar.** [no change] **(b) UPL Record.** [no change] **(c) Limitations on Disclosure.** [no change] **(d) Disclosure of Information.** [no change] **(e) Response to Inquiry.** Representatives of The Florida Bar, authorized by the board of governors, shall reply to inquiries regarding a pending or closed unlicensed practice of law investigation as follows: (1) *Cases Opened Prior To November 1, 1992*. Cases opened prior to November 1, 1992, shall remain confidential. (2) *Cases Opened On or After November 1, 1992*. In any case opened on or after November 1, 1992, the fact that an unlicensed practice of law investigation is pending and the status of the investigation shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4). (3) *Recommendations of Circuit Committee*. The recommendation of the circuit committee as to the disposition of an investigation opened on or after November 1, 1992, shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4). (4) *Final Action by Circuit Committee, Standing Committee, Designated Reviewer, and Bar Counsel*. The final action on investigations opened on or after November 1, 1992, shall be public information. The UPL record in cases opened on or	Clarifies that the Standing Committee on Unlicensed Practice of Law record becomes public

after November 1, 1992, that are closed by the circuit committee, the standing committee, or bar counsel as provided elsewhere in these rules, cases where a cease and desist affidavit has been accepted, and cases where a litigation recommendation has been approved by a designated reviewer as provided elsewhere in these rules, shall be public information and may be provided upon specific inquiry except that information that remains confidential under rule 10-8.1(c). The Florida Bar may charge a reasonable fee for identification of and photocopying the documents. **(f) Production of UPL Records Pursuant to Subpoena.** [no change] **(g) Notice to Judges.** [no change] **(h) Response to False or Misleading Statements.** [no change] **(i) Providing Otherwise Confidential Material.** [no change]	when a designated reviewer approves a recommendation for litigation.

* * * **CHAPTER 20. FLORIDA REGISTERED PARALEGAL PROGRAM** *** * *** **SUBCHAPTER 20-3. ELIGIBILITY REQUIREMENTS** **RULE 20-3.1 REQUIREMENTS FOR REGISTRATION** In order to be a Florida Registered Paralegal under this chapter, an individual must meet 1 of the following requirements. **(a) Educational and Work Experience Requirements.** A person may become a Florida Registered Paralegal by meeting 1 of the following education and paralegal work experience requirements: (1) a bachelor's degree in paralegal studies from an approved paralegal program, plus a minimum of 1 year of paralegal work experience; (2) a bachelor's degree <u>or higher degree other than a juris doctorate</u> from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 3 years of paralegal work experience; (3) an associate's degree in paralegal studies from an approved paralegal program, plus a minimum of 2 years of paralegal work experience; (4) an associate's degree from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 4 years of paralegal work experience; or (5) a juris doctorate degree from an American Bar Association accredited institution, plus a minimum of 1 year of paralegal work experience. **(b) Certification.** [no change]	Allows applicants who received a bachelors or associates degree from an unaccredited institution but a higher degree from an institution that is accredited to be considered for registration as a Florida Registered Paralegal. Without the amendment the higher degree is not taken into consideration when determining eligibility.

(c) Grandfathering. [no change]	

* * * SUBCHAPTER 20-7. CODE OF ETHICS AND RESPONSIBILITY **RULE 20-7.1 GENERALLY** A Florida Registered Paralegal shall adhere to the following Code of Ethics and Responsibility: **(a) Disclosure.** A Florida Registered Paralegal shall disclose his or her status as a Florida Registered Paralegal at the outset of any professional relationship with a client, ~~attorneys~~lawyers, a court or administrative agency or personnel thereof, and members of the general public. Use of the initials FRP meets the disclosure requirement only if the title paralegal also appears. For example, J. Doe, FRP, Paralegal. Use of the word "paralegal" alone also complies. **(b) Confidentiality and Privilege.** [no change] **(c) Appearance of Impropriety or Unethical Conduct.** [no change] **(d) Prohibited Conduct.** [no change] **(e) Performance of Services.** **(f) Competence.** [no change] **(g) Conflict of Interest.** [no change] **(h) Reporting Known Misconduct.** [no change]	Clarifies the language that can be used to meet the disclosure requirements.

APPENDIX C

THE FLORIDA BAR
NOTICE OF FILING

OCTOBER 15, 2010

The Florida Bar News

Annual Bar rules proposals

The Board of Governors of The Florida Bar hereby gives notice of filing with the Supreme Court of Florida, on or about October 1, 2010, a petition to amend the Rules Regulating The Florida Bar. The full text of the proposed amendments is printed below. Some are substantive revisions; others are merely editorial refinements. These items will constitute the Bar's annual filing of virtually all rules changes favorably recommended by the board since July 2008 but held for this consolidated submission. A copy of this consolidated submission may be requested by contacting the Rules Administrative Coordinator, The Florida Bar, 651 East Jefferson St., Tallahassee 32399-2300 or calling (850) 561-5600, ext. 5751.Members who desire to comment on these proposed amendments may do so within 30 days of the filing of the Bar's petition. Comments should be filed directly with the clerk of the Supreme Court of Florida, and a copy must be served on the executive director of The Florida Bar. Rule 1-12.1, Rules Regulating The Florida Bar, governs these proceedings.

RULES REGULATING THE FLORIDA BAR

CHAPTER 1. GENERAL

*** * ***

SUBCHAPTER 1-3. MEMBERSHIP

* * *

RULE 1-3.3. OFFICIAL BAR NAME AND ~~ADDRESS~~CONTACT INFORMATION

(a) Designation. Each member of The Florida Bar shall designate an official bar name, mailing address, ~~and~~ business telephone number, and business e-mail address, if the member has one. ~~If the address given is not the physical location or street address of the principal place of employment, then such information shall also be given.~~ If the physical location or street address is not the principal place of employment, the member must also provide an address for the principal place of employment.

(b) Changes. Each member shall promptly notify the executive director of any changes in any information required by this rule. The official bar name of each member of The Florida Bar shall be used in the course of the member's practice of law. ~~A change in official bar name may be made only upon request to and approval of~~ Members may change their official bar name by sending a request to

the Supreme Court of Florida. The court must approve all official bar name changes.

* * *

RULE 1-3.5 RETIREMENT

Any member of The Florida Bar may retire from The Florida Bar upon petition or other written request to, and approval of, the executive director. A retired member shall not practice law in this state except upon petition for reinstatement to, and approval of, the executive director; the payment of all membership fees, costs, or other amounts owed to The Florida Bar; and the completion of all outstanding continuing legal education or basic skills course requirements. A member who seeks and is approved to permanently retire shall not be eligible for reinstatement. A retired member shall be entitled to receive such other privileges as the board of governors may authorize.

A retired member shall remain subject to disciplinary action for acts committed before the effective date of retirement. Acts committed after retirement may be considered in evaluating the member's fitness to resume the practice of law in Florida as elsewhere stated in these Rules Regulating The Florida Bar.

If the executive director is in doubt as to disposition of a petition, the executive director may refer the petition to the board of governors for its action. Action of the executive director or board of governors denying a petition for retirement or reinstatement ~~hereunder~~from retirement may be reviewed upon petition to the Supreme Court of Florida.

RULE 1-3.6 DELINQUENT MEMBERS

Any person now or hereafter licensed to practice law in Florida shall be deemed a delinquent member if the member:

(a) fails to pay membership fees;

(b) fails to comply with continuing legal education or basic skills course requirements;

(c) fails to pay the costs assessed in diversion or disciplinary cases within 30 days after the disciplinary decision or diversion recommendation becomes final, unless such time is extended by the board of governors for good cause shown;

(d) fails to make restitution imposed in diversion cases or disciplinary proceedings within the time specified in the order in such cases or proceedings~~, unless the time is extended by the board of governors for good cause shown~~;

(e) fails to pay fees imposed as part of diversion for more than 30 days after the diversion recommendation became final, unless such time is extended by the board of governors for good cause shown; or

(f) fails to pay an award entered in fee arbitration proceedings conducted under the authority stated elsewhere in these rules and 30 days or more have elapsed since the date on which the award became final~~, unless such time is extended by the board of governors for good cause shown~~.

Delinquent members shall not engage in the practice of law in Florida nor be entitled to any privileges and benefits accorded to members of The Florida Bar in good standing.

RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP

(a) Eligibility for Reinstatement. [no change]

(b) Petitions Required. [no change]

(c) Members Who Have Retired or Been Delinquent for Less Than 5 Years, But More Than 3 Years. [no change]

(d) Members Who Have Retired or Been Delinquent for 5 Years or More. [no change]

(e) Members Who Have Permanently Retired. Members who have permanently retired shall not be reinstated under this rule and must be readmitted upon application to and approval by the Florida Board of Bar Examiners.

(~~e~~f) Members Delinquent 60 Days or Less. [no further change]

(~~f~~g) Inactive Members. [no further change]

* * *

RULE 1-3.10 APPEARANCE BY NON-FLORIDA LAWYER IN A FLORIDA COURT

(a) Non-Florida Lawyer Appearing in a Florida Court. A practicing lawyer of another state, in good standing and currently eligible to practice, may, upon association of a member of The Florida Bar and verified motion, be permitted to practice upon such conditions as the court deems appropriate under the circumstances of the case. Such lawyer shall comply with the applicable portions of this rule and the Florida Rules of Judicial Administration.

(1) *Application of Rules Regulating The Florida Bar*. Lawyers permitted to appear by this rule shall be subject to these Rules Regulating The Florida Bar while engaged in the permitted representation.

(2) *General Practice Prohibited*. Non-Florida lawyers shall not be permitted to engage in a general practice before Florida courts. For purposes of this rule more than 3 appearances within a 365-day period in separate representations shall be presumed to be a "general practice."

(3) *Effect of Professional Discipline or Contempt*. Non-Florida lawyers who have been disciplined or held in contempt by reason of misconduct committed while engaged in representation that is permitted by this rule shall thereafter be denied admission under this rule and the applicable provisions of the Florida Rules of Judicial Administration.

(b) Lawyer Prohibited From Appearing. No lawyer is authorized to appear pursuant to this rule or the applicable portions of the Florida Rules of Judicial Administration if the lawyer:

(1) is disbarred or suspended from practice in any jurisdiction;

(2) is a Florida resident, unless the attorney has an application pending for admission to The Florida Bar and has not previously been denied admission to The Florida Bar;

(3) is a member of The Florida Bar but ineligible to practice law;

(4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;

(5) has failed to provide notice to The Florida Bar or pay the filing fee as required by this rule; or

(6) is engaged in a "general practice" as defined elsewhere in this rule.

(c) Content of Verified Motion for Leave to Appear. Any verified motion filed under this rule or the applicable provisions of the Florida Rules of Judicial Administration shall include:

(1) a statement identifying all jurisdictions in which the lawyer is currently eligible to practice law;

(2) a statement identifying by date, case name, and case number all other matters in Florida state courts in which pro hac vice admission has been sought in the preceding 5 years, and whether such admission was granted or denied;

(3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or all jurisdictions in which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation, as appropriate;

(4) a statement identifying the date on which the legal representation at issue commenced and the party or parties represented;

(5) a statement that all applicable provisions of this rule and the applicable provisions of the Florida Rules of Judicial Administration have been read and that the verified motion complies with those rules;

(6) the name, record bar address, and membership status of the Florida Bar member or members associated for purposes of the representation;

(7) a certificate indicating service of the verified motion upon all counsel of record in the matter in which leave to appear pro hac vice is sought and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable $250 filing fee made payable to The Florida Bar or notice of the waiver of the fee; and

(8) a verification by the lawyer seeking to appear pursuant to this rule or the applicable provisions of the Florida Rules of Judicial Administration and the signature of the Florida Bar member or members associated for purposes of the representation.

Comment

Subdivision (a)(2) defines and prohibits the general practice before Florida courts by non-Florida lawyers. For purposes of this rule, an "appearance" means the initial or first appearance by that non-Florida lawyer in a case pending in a Florida court, and includes appearing in person or by telephone in court or filing a pleading, motion or other document with the court. A non-Florida lawyer making an appearance in a Florida court is required to comply with Fla. R. Jud. Admin. 2.510.

This rule does not prohibit a non-Florida lawyer from participating in more than 3 cases during any 365-day period; instead, it prohibits a non-Florida lawyer from making an initial or first appearance in more than 3 cases during any 365-day period.

Example: The following example illustrates the application of this rule to a non-Florida lawyer's appearances. Assume for this example that a lawyer licensed to practice in Georgia only has been admitted pro hac vice pursuant to Fla. R. Jud. Admin. 2.510 in 3 separate Florida cases on the following dates: January 10, 2008; February 3, 2008; and February 20, 2008.

(1) In this example, the lawyer would be prohibited from seeking to appear pro hac vice under Fla. R. Jud. Admin. 2.510 in another separate representation until the expiration of the 365-day period from his or her oldest of the 3 appearances (i.e., until January 10, 2009).

(2) In this example, the lawyer would be permitted under this rule to seek to appear pro hac vice in a new case on January 10, 2009 even if the 3 cases in which he or she made an appearance are still active.

(3) In this example, the lawyer could seek to appear pro hac vice in yet another new case on February 3, 2009. The fact that the lawyer's cases in which he or she appeared on January 10, 2008; February 3, 2008; February 20, 2008; and January 1, 2009 are still active would not prohibit that lawyer from seeking to appear in the new case on February 3, 2009, because, as of that date, the lawyer would have only made an initial appearance in 2 prior cases within that preceding 365-day period (i.e., on February 20, 2008 and January 1, 2009). Thus, under this rule, a non-Florida lawyer could have pending more than 3 cases for which he or she has appeared at any given time, as the restriction on general practice relates to the making of an initial appearance within a 365-day period and not to whether any such case is still active following the expiration of 365 days.

(4) Similarly, in the above example, if the non-Florida lawyer's 3 cases are all resolved by April 1, 2008, that lawyer would still be prohibited from seeking to make a new appearance until the expiration of the oldest of the 3 prior appearances (i.e., until January 10, 2009).

The purpose of this comment is to explain what constitutes an "appearance" under this rule and how to calculate the number of appearances in any 365-day period. This comment and the rule itself do not require a Florida court to grant any specific request to appear under Fla. R. Jud. Admin. 2.510 if the non-Florida lawyer meets the requirements of subdivision (a)(2). In all such cases, the decision of whether a non-Florida lawyer may appear in a case under Fla. R. Jud. Admin. 2.510 is within the discretion of the court.

This rule is not applicable to appearances in federal courts sitting in Florida, as appearances before each of those courts are regulated by the rules applicable to those courts. Further, an appearance in a federal court sitting in Florida does not constitute an "appearance" as contemplated by subdivision (a)(2), because subdivision (a)(2) applies only to appearances before Florida state courts.

* * *

RULE 1-3.12 PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

(a) Determination of Existence of Major Disaster. Solely for purposes of this rule, the Supreme Court of Florida shall determine when an emergency affecting the justice system as a result of a natural or other major disaster has occurred in:

(1) Florida and whether the emergency caused by the major disaster affects the entirety or only a part of Florida; or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in Florida pursuant to subdivision (c) shall extend only to lawyers who principally practice in the geographical area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary Pro Bono Practice in Florida Following Major Disaster. Following the determination of an emergency affecting the justice system in Florida pursuant to subdivision (a) of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and now residing in Florida are in need of pro bono services and the assistance of lawyers from outside Florida is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction and not disbarred, suspended, or otherwise restricted from practice in any jurisdiction, may provide legal services in Florida on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono or legal services program, or through such organization(s) specifically designated by the Supreme Court of Florida. A qualified legal services provider shall be

entitled to receive all court-awarded attorneys' fees for any representation rendered by the assigned lawyer pursuant to this rule. When a lawyer authorized to practice under this rule signs correspondence or pleadings, the lawyer's signature shall be followed by the title "Active Disaster Relief Lawyer."

(c) Temporary Practice in Florida Following Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another United States jurisdiction pursuant to subdivision (a), a lawyer who is authorized to practice law and principally practices in that affected jurisdiction, and who is not disbarred, suspended, or otherwise restricted from practice in any jurisdiction, may provide legal services in Florida on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or geographic area of such other jurisdiction, where the major disaster occurred.

(d) Duration of Authority for Temporary Practice. The authority to practice law in Florida granted by subdivision (b) of this rule shall end when the Supreme Court of Florida determines that the emergency affecting the justice system caused by the major disaster in Florida has ended except that a lawyer then representing clients in Florida pursuant to subdivision (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in Florida granted by subdivision (c) of this rule shall end 60 days after the Supreme Court of Florida declares that the emergency affecting the justice system caused by the major disaster in the affected jurisdiction has ended.

(e) Court Appearances. The authority granted by this rule does not include appearances in court except:

(1) pursuant to the Florida Rules of Judicial Administration and, if such authority is granted, the fee required by rule 1-3.10, Rules Regulating The Florida Bar, shall be waived; or

(2) if the Supreme Court of Florida, in any determination made under subdivision (a) of this rule, grants blanket permission to appear in all or designated courts of Florida to lawyers providing legal services pursuant to subdivision (b) of this rule. If such an authorization is included, the fee required by rule 1-3.10, Rules Regulating The Florida Bar, shall be waived.

(f) Disciplinary Authority and Registration Requirement. Lawyers providing legal services in Florida pursuant to subdivisions (b) or (c) are subject to the Supreme Court of Florida's disciplinary authority and the Rules of Professional Conduct of Florida. Lawyers providing legal services in Florida under subdivisions (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with The Florida Bar in a form prescribed by The Florida Bar. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlicensed practice of law in Florida.

(g) Notification to Clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule shall inform clients in Florida of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in Florida except as permitted by this rule. They shall not state or imply to any person that they are otherwise authorized to practice law in Florida. The notification required by this rule shall be in the following format: "…..[NAME]…..., licensed to practice law in …..[STATE(s)]….. only, providing services pursuant to rule 1-3.12 of the Rules Regulating The Florida Bar." This language shall appear below the signature of the lawyer on the initial written communications and subsequent written communications with the client and shall be given orally when speaking to the client. Once given orally to the client, it is not necessary to repeat the notification each time the lawyer has verbal contact with that client.

Comment

A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time, interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices, or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by t he Supreme Court of Florida. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency, or an event caused by terrorists or acts of war.

Under subdivision (a)(1), the Supreme Court of Florida shall determine whether a major disaster causing an emergency affecting the justice system has occurred in Florida, or in a part of Florida, for purposes of triggering subdivision (b) of this rule. The Supreme Court of Florida may, for example, determine that the entirety of Florida has suffered a disruption in the provision of legal services or that only certain geographic areas have suffered such an event. The authority granted by subdivision (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended, or otherwise restricted from practice in any other manner in any other jurisdiction.

Subdivision (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended, or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this rule include, but are not limited to, probation, inactive status, disability inactive status, or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this rule. Lawyers permitted to provide legal services pursuant to this rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, the Supreme Court of Florida may instead designate other specific organization(s) through which these legal services may be rendered. Under subdivision (b), an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in Florida provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in Florida on a temporary basis under subdivision (c) of rule 4-5.5, Rules Regulating The Florida Bar.

Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by the Supreme Court of Florida to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended, or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under subdivision (c) to provide legal services on a temporary basis in Florida. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction and are limited to advice and services the lawyer would be authorized to provide in the lawyer's home jurisdiction. For purposes of this rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction.

Emergency conditions created by major disasters end, and when they do, the authority created by subdivisions (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under subdivision (d), the Supreme Court of Florida determines when those conditions end only for purposes of this rule. The authority granted under subdivision (b) shall end upon such determination except that lawyers assisting residents of Florida under subdivision (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by subdivision (c) will end 60 days after the Supreme Court of Florida makes such a determination with regard to an affected jurisdiction.

Subdivisions (b) and (c) do not authorize lawyers to appear in the courts of Florida. Court appearances are subject to the pro hac vice admission rules of the particular court. The Supreme Court of Florida may, in a determination made under subdivision (e)(2), include authorization for lawyers who provide legal services in Florida under subdivision (b) to appear in all or designated courts of Florida without need for such pro hac vice admission. If such an authorization is included, any fee required by rule 1-3.10 shall be waived. A lawyer who has appeared in the courts of Florida pursuant to subdivision (e) may continue to appear in any such matter notwithstanding a declaration under subdivision (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to rule 4-1.16 of the Rules Regulating The Florida Bar.

Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this rule.

The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in Florida pursuant to subdivisions (b) or (c) of this rule is disbarred, suspended, or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

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SUBCHAPTER 1-8. PROGRAMS AND FUNCTIONS

* * *

RULE 1-8.4 CLIENTS' SECURITY FUND

The board of governors may provide monetary relief to persons who suffer reimbursable losses as a result of misappropriation, embezzlement, or other wrongful taking or conversion ~~by a member of The Florida Bar~~ of money or other property ~~that comes into the member's possession or control, all~~ in accordance with chapter 7.

* * *

SUBCHAPTER 1-12. AMENDMENTS

RULE 1-12.1 AMENDMENT TO RULES; AUTHORITY; NOTICE; PROCEDURES; COMMENTS

(a) Authority to Amend. [no change]

(b) Proposed Amendments. [no change]

(c) Board Review of Proposed Amendments. [no change]

(d) Notice of Proposed Board Action. Notice of the proposed action of the board on a proposed

amendment shall be given in an edition of The Florida Bar *News* or The Florida Bar website that is published prior to the meeting of the board at which the board action is taken. The notice shall identify the rule(s) to be amended and shall state in general terms the nature of the proposed amendments.

(e) Comments by Members. [no change]

(f) Approval of Amendments. [no change]

(g) Notice of Intent to File Petition. Notice of intent to file a petition to amend these Rules Regulating The Florida Bar shall be published in The Florida Bar *News* or The Florida Bar website at least 30 days before the filing of the petition. The notice shall set forth the text of the proposed amendments, state the date the petition will be filed, and state that any comments or objections must be filed within 30 days of filing the petition. A copy of all comments or objections shall be served on the executive director of The Florida Bar and any persons who may have made an appearance in the matter.

(h) Action by the Supreme Court of Florida. The court shall review all proposed amendments filed under this rule and such amendments shall not become effective until an order is issued approving them. Final action of the court shall be reported in The Florida Bar *News* and on The Florida Bar website.

(i) Waiver. [no change]

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CHAPTER 3. RULES OF DISCIPLINE

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SUBCHAPTER 3-5. TYPES OF DISCIPLINE

RULE 3-5.1 GENERALLY

A judgment entered, finding a member of The Florida Bar guilty of misconduct, shall include one or more of the following disciplinary measures:

(a) Admonishments. [no change]

(b) Minor Misconduct. [no change]

(c) Probation. [no change]

(d) Public Reprimand. [no change]

(e) Suspension. [no change]

(f) Disbarment. [no change]

(g) Disciplinary Revocation. A disciplinary revocation is tantamount to a disbarment. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after

the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or such other period of time in excess of 5 years contained in said order.

(~~g~~h) Notice to Clients. Upon service on the respondent of an order of disbarment, disbarment on consent, disciplinary revocation, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent shall, unless this requirement is waived or modified in the court's order, forthwith furnish a copy of the order to:

(1) all of the respondent's clients with matters pending in the respondent's practice;

(2) all opposing counsel or co-counsel in the matters listed in (1), above; and

(3) all courts, tribunals, or adjudicative agencies before which the respondent is counsel of record.

Within 30 days after service of the order the respondent shall furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

(~~h~~i) Forfeiture of Fees. [no further change]

(~~i~~j) Restitution. [no further change]

~~**(j) Disbarment on Consent**. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent shall have the same effect as and shall be governed by the same rules as provided for disbarment elsewhere in these Rules Regulating The Florida Bar.~~

~~Matters involving disbarment on consent shall be processed in the same manner as conditional guilty pleas for consent judgments as provided elsewhere in these rules Regulating The Florida Bar.~~

RULE 3-5.2 EMERGENCY SUSPENSION AND INTERIM PROBATION OR INTERIM PLACEMENT ON THE INACTIVE LIST FOR INCAPACITY NOT RELATED TO MISCONDUCT

(a) Petition for Emergency Suspension.

(1) *Great Public Harm*. On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that an attorney appears to be causing great public harm, the Supreme Court of Florida may issue an order suspending said attorney on an emergency basis.

(2) *Discipline by Foreign Jurisdiction*. On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by a certified copy of an order of a foreign disciplinary jurisdiction suspending or disbarring an attorney from the practice of law, the Supreme Court of Florida may issue an order suspending the attorney on an emergency basis. *See* subdivision (*l*) of rule 3-7.2.

A petition for emergency suspension shall also constitute a formal complaint. The respondent shall have 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for emergency suspension in which to file an answer and any affirmative defenses to the bar's petition.

(b) Petition for Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct. On petition of The Florida Bar, authorized by its president, president-elect, or executive director, supported by 1 or more affidavits demonstrating facts personally known to the affiants that, if unrebutted, would establish clearly and convincingly that conditions or restrictions on ~~an attorney~~a lawyer's privilege to practice law in Florida are necessary for protection of the public, the

Supreme Court of Florida may issue an order placing said attorneylawyer on interim probation, the conditions of which shall be as provided in rule 3-5.1(c); or placing the lawyer on the inactive list for incapacity not related to misconduct as provided in rule 3-7.13. This petition shall also constitute the formal complaint. The respondent shall have 20 days after docketing by the Supreme Court of Florida of its order granting the bar's petition for interim probation in which to file an answer and any affirmative defenses to the bar's petition.

(c) Trust Accounts. [no change]

(d) New Cases and Existing Clients. [no change]

~~**(e) Filing of Formal Complaints.** The Florida Bar shall file a formal complaint within 60 days of the emergency order, without the necessity of a finding of probable cause by either a grievance committee or the board of governors.~~

(~~f~~e) Motions for Dissolution. ~~(1)~~The ~~attorney~~lawyer may move at any time for dissolution or amendment of an emergency order by motion filed with the Supreme Court of Florida, a copy of which will be served on bar counsel. Such motion shall not stay any other proceedings and applicable time limitations in the case and, unless the motion fails to state good cause or is procedurally barred as an invalid successive motion, shall immediately be assigned to a referee designated by the chief justice. The filing of such motion shall not stay the operation of an order of emergency suspension or interim probation entered under this rule.

(f) Appointment of Referee. Upon entry of an order of suspension or interim probation, as provided above, the Supreme Court of Florida shall promptly appoint or direct the appointment of a referee.

(~~2~~g) Hearing on Petition to Terminate or Modify Suspension. The referee shall hear ~~such~~a motion to terminate or modify a suspension or interim probation imposed under this rule within 7 days of assignment~~, or a shorter time if practicable,~~ and submit a report and recommendation to the Supreme Court of Florida within 7 days of the date of the hearing~~, or a shorter time if practicable~~. The referee shall recommend dissolution or amendment, whichever is appropriate, to the extent that bar counsel cannot demonstrate a likelihood of prevailing on the merits on any element of the underlying ~~complaint~~rule violations.

(~~3~~**h) Successive Motions Prohibited.** Successive motions for dissolution shall be summarily dismissed by the ~~supreme court~~Supreme Court of Florida to the extent that they raise issues that were or with due diligence could have been raised in a prior motion.

(4**i) Review by the Supreme Court of Florida.** Upon receipt of the referee's recommended order on the motion for dissolution or amendment, the ~~supreme court~~Supreme Court of Florida shall review and act upon the referee's findings and recommendations.

(~~g~~j) Hearings on ~~Formal Complaints~~Issues Raised in Petitions for Emergency Suspension or Interim Probation and Sanctions. ~~Upon the filing of a formal complaint~~Once the Supreme Court of Florida has granted a petition for emergency suspension or interim probation as set forth in this rule, ~~based on charges supporting an emergency order, the chief justice shall appoint a referee to t~~the referee appointed by the court shall hear the matter in the same manner as provided in rule 3-7.6, except that the referee shall hear the matter after the lawyer charged shall have answered the charges in the petition for emergency suspension or interim probation or when the time has expired for filing an answer. ~~and~~ The referee shall issue a final report and recommendation within 90 days of appointment. ~~This time limit shall apply only to trials on complaints in connection with which an emergency suspension or interim probation is in effect.~~ If the time limit specified in this subdivision is not met, that portion of an emergency order imposing a suspension or interim probation shall be automatically dissolved, except upon order of the ~~supreme court~~Supreme Court of Florida, ~~upon showing of good cause,~~ provided that any other appropriate disciplinary action on the underlying

conduct still may be taken.

(~~h~~k) Proceedings in the Supreme Court of Florida. Consideration of the referee's report and recommendation shall be expedited in the ~~supreme court~~Supreme Court of Florida. If oral argument is granted, the chief justice shall schedule oral argument as soon as practicable.

(~~i~~l) Waiver of Time Limits. ~~R~~The respondent may at any time waive the time requirements set forth in this rule by written request made to and approved by the referee assigned to hear the matter.

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SUBCHAPTER 3-6. EMPLOYMENT OF CERTAIN ~~ATTORNEYS~~ LAWYERS OR FORMER ~~ATTORNEYS~~ LAWYERS

RULE 3-6.1 GENERALLY

(a) Authorization and Application. Except as limited in this rule, persons or entities providing legal services may employ suspended ~~attorneys~~lawyers and former ~~attorneys~~lawyers who have been disbarred or whose disciplinary resignations or disciplinary revocations have been ~~allowed~~granted by the Florida Supreme Court [for purposes of this rule such ~~attorneys~~lawyers and former ~~attorneys~~lawyers are referred to as "individual(s) subject to this rule"] to perform those services that may ethically be performed by nonlawyers employed by authorized business entities.

An individual subject to this rule shall be considered as employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor providing services to the entity.

(b) Employment by Former Subordinates Prohibited for a Period of 3 Years. An individual subject to this rule may not, for a period of 3 years from the entry of the order pursuant to which the suspension, disciplinary resignation, disciplinary revocation, or disbarment became effective, or until the individual is reinstated or readmitted to the practice of law, whichever occurs sooner, be employed by or work under the supervision of another ~~attorney~~lawyer who was supervised by the individual at the time of or subsequent to the acts giving rise to the order.

(c) Notice of Employment Required. [no change]

(d) Prohibited Conduct. [no change]

(e) Quarterly Reports by Individual and Employer Required.

[no change]

SUBCHAPTER 3-7. PROCEDURES

RULE 3-7.1 CONFIDENTIALITY

(a) Scope of Confidentiality. [no change]

(b) Public Record. [no change]

(c) Circuit Court Proceedings. [no change]

(d) Limitations on Disclosure. Any material provided to The Florida Bar that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the public record, that portion of the public record may be sealed by the grievance committee chair, the referee, or the Supreme Court of Florida.

The procedure for maintaining the required confidentiality shall be as set forth in subdivision (m) below.

(e) Response to Inquiry. [no change]

(f) Notice to Law Firms. [no change]

(g) Production of Disciplinary Records Pursuant to Subpoena. [no change]

(h) Notice to Judges. [no change]

(i) Evidence of Crime. [no change]

(j) Chemical Dependency and Psychological Treatment. [no change]

(k) Response to False or Misleading Statements. [no change]

(*l*) Disclosure by Waiver of Respondent. [no change]

(m) Maintaining Confidentiality Required by Rule or Law. The bar will maintain confidentiality of documents and records in its possession and control as required by applicable federal or state law in accordance with the requirements of Fla. R. Jud. Admin. 2.420. It shall be the duty of respondents and other persons submitting documents and information to the bar to notify bar staff that such documents or information contain material that is exempt from disclosure under applicable rule or law and to request that such exempt material be protected and not be considered public record. Requests to exempt from disclosure all or part of any documents or records must be accompanied by reference to the statute or rule applicable to the information for which exemption is claimed.

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RULE 3-7.3 REVIEW OF INQUIRIES, COMPLAINT PROCESSING, AND INITIAL INVESTIGATORY PROCEDURES

(a) Screening of Inquiries. Prior to opening a disciplinary file, bar counsel shall review the inquiry made and determine whether the alleged conduct, if proven, would constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline. If bar counsel determines that the facts allege a fee dispute which, if proven, would probably not constitute a clear violation under ~~4-1.5 of the Rules Regulating The Florida Bar~~these rules, bar counsel may, with the consent of the complainant and respondent, refer the matter to ~~the appropriate circuit arbitration committee for arbitration~~The Florida Bar Grievance Mediation and Fee Arbitration Program under chapter 14. If bar counsel determines that the facts, if proven, would not constitute a violation of the Rules Regulating The Florida Bar warranting the imposition of discipline, bar counsel may decline to pursue the inquiry. A decision by bar counsel not to pursue an inquiry shall not preclude further action or review under the Rules Regulating The Florida Bar. The complainant and respondent shall be notified of a decision not to pursue an inquiry and shall be given the reasons therefor.

(b) Complaint Processing and Bar Counsel Investigation. [no change]

(c) Form for Complaints. [no change]

(d) Dismissal of Disciplinary Cases. [no change]

(e) Diversion to Practice and Professionalism Enhancement Programs. [no change]

(f) Referral to Grievance Committees. [no change]

(g) Information Concerning Closed Inquiries and Complaints Dismissed by Staff. [no change]

RULE 3-7.4 GRIEVANCE COMMITTEE PROCEDURES

(a) Notice of Hearing. [no change]

(b) Complaint Filed With Grievance Committee. v

(c) Investigation. [no change]

(d) Conduct of Proceedings. [no change]

(e) No Delay for Civil or Criminal Proceedings. [no change]

(f) Counsel and Investigators. [no change]

(g) Quorum, Panels, and Vote. [no change]

(h) Rights and Responsibilities of the Respondent. [no change]

(i) Rights of the Complaining Witness. [no change]

(j) Finding of No Probable Cause. [no change]

(k) Letter Reports in No Probable Cause Cases. [no change]

(*l*) Preparation, Forwarding, and Review of Grievance Committee Complaints. If a grievance committee or the board of governors finds probable cause, the bar counsel assigned to the committee shall promptly prepare a record of its investigation and a formal complaint. The record before the committee shall consist of all reports, correspondence, papers, and/or recordings furnished to or received from the respondent, and the transcript of grievance committee meetings or hearings, if the proceedings were attended by a court reporter; provided, however, that the committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. The formal complaint shall be approved by the member of the committee who presided in the proceeding. The formal complaint shall be in such form as shall be prescribed by the board. If the presiding member of the grievance committee disagrees with the form of the complaint, the presiding member may direct bar counsel to make changes accordingly. If bar counsel does not agree with the changes, the matter shall be referred to the designated reviewer of the committee for appropriate action. When a formal complaint by a grievance committee is not referred to the designated reviewer, or is not returned to the grievance committee for further action, the formal complaint shall be promptly forwarded to and reviewed by staff counsel. ~~who~~ Staff counsel shall file the formal complaint~~,~~ and furnish a copy ~~of the formal complaint~~ to the respondent. Staff counsel shall request the Supreme Court of Florida assign a referee, or order the chief judge of the circuit where venue is lodged to assign a referee, to try the cause. A copy of the record shall be made available to the respondent at the respondent's expense.

If, at any time before the filing of a formal complaint, bar counsel, staff counsel, and the designated reviewer all agree that appropriate reasons indicate that the formal complaint should not be filed, the case may be returned to the grievance committee for further action.

(m) Recommendation of Admonishment for Minor Misconduct. [no change]

(n) Rejection of Admonishment. [no change]

(*o*) Recommendation of Diversion to Remedial Programs. [no change]

~~**(p) Preparation, Review, and Filing of Complaint.** When a grievance committee formal complaint is not referred to the disciplinary review committee, or returned to the grievance committee, staff counsel shall sign the complaint and file the same in the Supreme Court of Florida, serve a copy on the respondent, and request the Supreme Court of Florida to assign a referee to try the cause. If probable cause is found by the board, bar counsel will prepare the formal complaint.~~

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. [no change]

(b) Review of Grievance Committee Matters. [no change]

(c) Board Action on Review of Designated Reviewer Recommendations. [no change]

(d) Notice of Board Action. [no change]

(e) Finding of No Probable Cause. [no change]

(f) Control of Proceedings. [no change]

(g) Filing Service on Board of Governors. All matters to be filed with or served upon the board shall be addressed to the board of governors and filed with the executive director. The executive director or his designees shall be the custodians of the official records of The Florida Bar.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees. [no change]

(b) Trial by Referee. [no change]

(c) Pretrial Conference. [no change]

(d) Venue. [no change]

(e) Style of Proceedings. [no change]

(f) Nature of Proceedings. [no change]

(g) Bar Counsel. [no change]

(h) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance*. [no change]

(2) *Answer and Motion*. [no change]

(3) *Reply*. [no change]

(4) *Disposition of Motions*. [no change]

(5) *Filing and Service of Pleadings*. [no change]

(6) *Amendment*. [no change]

(7) *Expediting the Trial*. [no change]

(8) *Disqualification of Referee*. Upon motion of either party, aA referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification, the chief ~~justice~~judge of the circuit in which the original referee resided shall appoint a successor referee from that same circuit.

(i) Notice of Final Hearing. [no change]

(j) The Respondent. [no change]

(k) Complaining Witness. [no change]

(*l*) Parol Evidence. [no change]

(m) Referee's Report. [no change]

(n) The Record. [no change]

(*o*) Plea of Guilty by Respondent. [no change]

(p) Cost of Review or Reproduction. [no change]

(q) Costs. [no change]

Court Comment

[no change]

Comment

[no change]

RULE 3-7.7 PROCEDURES BEFORE SUPREME COURT OF FLORIDA

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court of Florida in the following manner:

(a) Right of Review. [no change]

(b) Appointment of Bar Counsel. [no change]

(c) Procedure for Review. Review by the Supreme Court of Florida shall be in accordance with the following procedures:

(1) ~~*Time for Review*~~*Notice of Intent to Seek Review of Report of Referee*. ~~Proceedings for review shall be commenced~~A party to a bar disciplinary proceeding wishing to seek review of a report of referee shall give notice of such intent within 60 days of the date on which the ~~referee serves a copy of the referee report on the respondent and The Florida Bar~~referee's report is docketed by the Clerk of the Supreme Court of Florida. Prompt written notice of the board's action, if any, shall be communicated to the respondent. The proceeding shall be commenced by filing with the Supreme Court of Florida ~~a petition for~~notice of intent to seek review of a report of referee, specifying those portions of the report of a referee sought to be reviewed. Within 20 days after service of such ~~petition~~notice of intent to seek review, the opposing party may file a cross-~~petition~~notice for review specifying any additional portion of the report that said party desires to be reviewed. The filing of such ~~petition~~notice or cross-~~petition~~notice shall be jurisdictional as to a review to be procured as a matter of right, but the court may, in its discretion, consider a late-filed ~~petition~~notice or cross-~~petition~~notice upon a showing of good cause.

(2) *Record on Review*. The report and record filed by the referee shall constitute the record on review. If hearings were held at which testimony was heard, but no transcripts thereof were filed in the matter,

the party seeking review shall order preparation of all such transcripts, file the original thereof with the court, and serve copies on the opposing party, on or before the time of filing of the initial brief, as provided elsewhere in this rule. The party seeking review shall be responsible for, and pay directly to the court reporter, the cost of preparation of transcripts. Failure to timely file and serve all of such transcripts may be cause for dismissal of the party's petition for review.

(3) *Briefs*. The party first seeking review shall file a brief in support of the ~~petition for~~notice of intent to seek review within 30 days of the filing of the ~~petition~~notice. The opposing party shall file an answer brief within 20 days after the service of the initial brief of the party seeking review, which answer brief shall also support any cross-~~petition~~notice for review. The party originally seeking review may file a reply brief within ~~10~~20 days after the service of the answer brief. The cross-reply brief, if any, shall be served within 20 days thereafter. Computation of time for filing briefs under this rule shall follow the applicable Florida Rules of Appellate Procedure. The form, length, binding, type, and margin requirements of briefs filed under this rule shall follow the requirements of Fla. R. App. P. 9.200.

(4) *Oral Argument*. Request for oral argument may be filed in any case wherein a party files a ~~petition for~~notice of intent to seek review ~~is filed,~~ at the time of filing the first brief. If no request is filed, the case will be disposed of without oral argument unless the court orders otherwise.

(5) *Burden*. [no change]

(6) *Judgment of Supreme Court of Florida*. [no change]

(7) *Procedures on Motions to Tax Costs*. [no change]

(d) Precedence of Proceedings. ~~Petitions for~~Notices of intent to seek review in disciplinary proceedings shall take precedence over all other civil causes in the Supreme Court of Florida.

(e) Extraordinary Writs. [no change]

(f) Florida Rules of Appellate Procedure. To the extent necessary to implement this rule and if not inconsistent herewith, the Florida Rules of Appellate Procedure shall be applicable to ~~petitions for~~notices of intent to seek review in disciplinary proceedings, provided service on The Florida Bar shall be accomplished by service on bar counsel and staff counsel.

(g) Contempt by Respondent. [no change]

(h) Pending Disciplinary Cases. If disbarment or disciplinary revocation is ordered by the court, dismissal without prejudice of other pending cases against the respondent may be ordered in the court's disbarment or disciplinary revocation order.

Comment

[no change]

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RULE 3-7.9 CONSENT JUDGMENT

(a) Before Formal Complaint is Filed. [no change]

(b) After Filing of Formal Complaint. [no change]

(c) Approval of Consent Judgments. [no change]

(d) Content of Conditional Pleas. [no change]

(e) Disbarment on Consent. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent shall have the same effect as, and shall be governed by, the same rules provided for disbarment elsewhere in these Rules Regulating The Florida Bar.

Matters involving disbarment on consent shall be processed in the same manner as set forth in subdivisions (a) through (d) of this rule and elsewhere in these Rules Regulating The Florida Bar, except that a respondent may enter into a disbarment on consent without admitting any of the fact or rule violations alleged by the bar. In such event, the disbarment on consent shall set forth a brief recitation of the allegations underlying the disbarment on consent. This option shall only be available for disbarments on consent and not for any other type of consent judgment.

(~~e~~f) Effect of Pleas on Certification. [no further change]

RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES

(a) Reinstatement; Applicability. ~~An attorney who has been suspended~~A lawyer who is ineligible to practice due to a court-ordered disciplinary suspension of 91 days or more or who has been placed on the inactive list for incapacity not related to misconduct may be reinstated to membership in good standing in The Florida Bar and be eligible to practice again pursuant to this rule. The proceedings under this rule are not applicable to ~~suspension for nonpayment of membership fees~~any attorney who is not eligible to practice law due to a delinquency as defined in rule 1-3.6 of these rules.

(b) Petitions; Form and Contents. [no change]

(c) Deposit for Cost. [no change]

(d) Reference of Petition For Hearing. [no change]

(e) Bar Counsel. [no change]

(f) Determination of Fitness by Referee Hearing. The referee to whom the petition for reinstatement is referred shall conduct the hearing as a trial, in the same manner, to the extent practical, as provided elsewhere in these rules. The matter to decide shall be the fitness of the petitioner to resume the practice of law. In determining the fitness of the petitioner to resume the practice of law, the referee shall consider whether the petitioner has engaged in any disqualifying conduct, the character and fitness of the petitioner, and whether the petitioner has been rehabilitated, as further described in this subdivision. All conduct engaged in after the date of admission to The Florida Bar shall be relevant in proceedings under this rule.

(1) *Disqualifying Conduct*. A record manifesting a deficiency in the honesty, trustworthiness, diligence, or reliability of a petitioner may constitute a basis for denial of reinstatement. The following shall be considered as disqualifying conduct:

(A) unlawful conduct;

(B) academic misconduct;

(C) making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on any application requiring a showing of good moral character;

(D) misconduct in employment;

(E) acts involving dishonesty, fraud, deceit, or misrepresentation;

(F) abuse of legal process;

(G) financial irresponsibility;

(H) neglect of professional obligations;

(I) violation of an order of a court;

(J) evidence of mental or emotional instability;

(K) evidence of drug or alcohol dependency;

(L) denial of admission to the bar in another jurisdiction on character and fitness grounds;

(M) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; ~~and~~

(N) failure of a felony-suspended lawyer to submit proof that the affected lawyer's civil rights have been restored; and

(*O*) any other conduct that reflects adversely upon the character or fitness of the applicant.

(2) *Determination of Character and Fitness*. In addition to other factors in making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

(A) age at the time of the conduct;

(B) recency of the conduct;

(C) reliability of the information concerning the conduct;

(D) seriousness of the conduct;

(E) factors underlying the conduct;

(F) cumulative effect of the conduct or information;

(G) evidence of rehabilitation;

(H) positive social contributions since the conduct;

(I) candor in the discipline and reinstatement processes; and

(J) materiality of any omissions or misrepresentations.

(3) *Elements of Rehabilitation*. Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. Any petitioner for reinstatement from discipline for prior misconduct shall be required to produce clear and convincing evidence of such rehabilitation including, but not limited to, the following elements:

(A) strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(B) unimpeachable character and moral standing in the community;

(C) good reputation for professional ability, where applicable;

(D) lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;

(E) personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;

(F) restitution of funds or property, where applicable; and

(G) positive action showing rehabilitation by such things as a person's occupation, religion, or community or civic service.

~~Merely showing that an individual is now living as and doing those things that should be done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society.~~ The requirement of positive action is appropriate for persons seeking reinstatement to the bar as well as for applicants for admission to the bar because service to one's community is an essential obligation of members of the bar.

(4) *Educational Requirements*.

(A) In the case of a petitioner's ineligibility to practice for a period of 3 years or longer under this rule, the petitioner must demonstrate to the referee that the petitioner is current with changes and developments in the law:

(i) The petitioner shall have completed at least 10 hours of continuing legal education courses for each year or portion of a year that the petitioner was ineligible to practice.

(ii) The petitioner may further demonstrate that the petitioner is current with changes and developments in the law by showing that the petitioner worked as a law clerk, paralegal, or taught classes on legal issues during the period of ineligibility to practice.

(B) A petitioner who has been ineligible to practice for 5 years or more shall not be reinstated under this rule until the petitioner has re-taken and passed the Florida portions of the Florida Bar Examination and the Multistate Professional Responsibility Examination.

(g) Hearing; Notice; Evidence. [no change]

(h) Prompt Hearing; Report. [no change]

(i) Review. [no change]

(j) Recommendation of Referee and Judgment of the Court. [no change]

(k) Successive Petitions. [no change]

(*l*) Petitions for Reinstatement to Membership in Good Standing. [no change]

(m) Costs. [no change]

(n) Readmission; Applicability. [no change]

* * *

RULE 3-7.12 DISCIPLINARY RESIGNATION FROM

THE FLORIDA BAR SUNSETTED 1-1-06

NEW RULE PROPOSED

RULE 3-7.12 DISCIPLINARY REVOCATION FROM THE FLORIDA BAR

If a disciplinary agency is investigating the conduct of a lawyer, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and a petition for disciplinary revocation may be filed pursuant to this rule. Disciplinary revocation is tantamount to disbarment in that both sanctions terminate the license and privilege to practice law and both require readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. A lawyer may seek disciplinary revocation from The Florida Bar during the progress of disciplinary proceedings in the following manner:

(a) Petition for Disciplinary Revocation. The petition for disciplinary revocation shall be styled "In re …..(respondent's name)……," titled "Petition for Disciplinary Revocation," filed with the Supreme Court of Florida and shall contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. The statement shall describe the charges made or those under investigation for professional misconduct, results of past proceedings, and the status of pending investigations and proceedings. The petition shall state whether it is with or without leave to reapply for readmission to the bar. A copy of the petition shall be served upon the executive director of The Florida Bar.

(b) Judgment. Within 60 days after filing and service of the petition, The Florida Bar shall file with the Supreme Court of Florida its response to the petition either supporting or opposing the petition for disciplinary revocation. The bar's response shall be determined by the bar's board of governors. A copy of the response shall be served upon the petitioner. The Supreme Court of Florida shall consider the petition, any response, and the charges against the petitioner. The Supreme Court of Florida may enter judgment granting disciplinary revocation if it has been shown by the petitioner in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition and that such will neither adversely affect the integrity of the courts nor hinder the administration of justice nor the confidence of the public in the legal profession. If otherwise, the petition shall be denied. If the judgment grants the disciplinary revocation, the judgment may require that the disciplinary revocation be subject to appropriate conditions. Such conditions may include, but shall not be limited to, requiring the petitioner to submit to a full audit of all client trust accounts, to execute a financial affidavit attesting to current personal and professional financial circumstances, and to maintain a current mailing address with the bar for a period of 5 years after the disciplinary revocation becomes final or such other time as the court may order.

(c) Delay of Disciplinary Proceedings. The filing of a petition for disciplinary revocation shall not stay the progress of the disciplinary proceedings without the approval of the bar's board of governors.

(d) Dismissal of Pending Disciplinary Cases. If disciplinary revocation is granted by the Supreme Court of Florida under this rule, such disciplinary revocation shall serve to dismiss all pending disciplinary cases.

(e) Costs of Pending Disciplinary Cases. The judgment of the court granting disciplinary revocation may impose a judgment for the costs expended by The Florida Bar in all pending disciplinary cases against the respondent. Such costs shall be of the types and amounts as authorized elsewhere in these Rules Regulating The Florida Bar.

Comment

The disciplinary revocation rule replaces the former disciplinary resignation rule, but with added safeguards. Disciplinary revocation is allowed for a minimum of 5 years up to permanent disciplinary revocation. The bar's response to all such petitions must be determined by the bar's board of governors. Disciplinary revocation, like the formerly allowed disciplinary resignation, is "tantamount to disbarment." *The Florida Bar* v. *Hale*, 762 So.2d 515, 517 (Fla. 2000). Like disbarred lawyers, lawyers whose licenses have been revoked pursuant to disciplinary revocation still remain subject to the continuing jurisdiction of the Supreme Court of Florida and must meet all requirements for readmission to bar membership. *The Florida Bar* v. *Ross*, 732 So.2d 1037, 1041 (Fla. 1998); *The Florida Bar* v. *Hale*, 762 So.2d 515, 517 (Fla. 2000).

RULE 3-7.13 INCAPACITY NOT RELATED TO MISCONDUCT

(a) Classification and Effect of Incapacity. [no change]

(b) Applicable Rules of Procedure. Proceedings under this rule shall be processed under the Rules of Discipline in the same manner as proceedings involving acts of misconduct, except that emergency or interim proceedings authorized under rule 3-5.2 shall be processed as stated in that rule.

(c) Reinstatement to Practice. [no change]

(d) Proceedings Upon Adjudication of Incapacity or Hospitalization Under the Florida Mental Health Act or Under the Authority of Applicable Law. [no change]

(e) Proceedings Upon Consent to Incapacity. [no change]

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CHAPTER 4. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER 4-1. CLIENT-LAWYER RELATIONSHIP

*** * ***

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. [no change]

(b) Factors to Be Considered in Determining Reasonable Fees and Costs. [no change]

(c) Consideration of All Factors. [no change]

(d) Enforceability of Fee Contracts. [no change]

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client. [no change]

(f) Contingent Fees. As to contingent fees:

(1) [no change]

(2) [no change]

(3) [no change]

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation

is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements:

(A) The contract shall contain the following provisions:

(i) “The undersigned client has, before signing this contract, received and read the statement of client’s rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s).”

(ii) “This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client.”

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to $1 million; plus

2. 30% of any portion of the recovery between $1 million and $2 million; plus

3. 20% of any portion of the recovery exceeding $2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:

1. 40% of any recovery up to $1 million; plus

2. 30% of any portion of the recovery between $1 million and $2 million; plus

3. 20% of any portion of the recovery exceeding $2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to $1 million; plus

2. 20% of any portion of the recovery between $1 million and $2 million; plus

3. 15% of any portion of the recovery exceeding $2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain an attorney of the client’s choice because of the limitations set

forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii) a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability whereby the compensation is dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall provide the language of ~~a~~Article I, ~~s~~Section 26 of the Florida Constitution to the client in writing and shall orally inform the client that:

a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000~~.00~~ of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000~~.00~~, exclusive of reasonable and customary costs and regardless of the number of defendants.

b. If a lawyer chooses not to accept the representation of a client under the terms of ~~a~~Article I, ~~s~~Section 26 of the Florida Constitution, the lawyer shall advise the client, both orally and in writing of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the representation under the terms of ~~a~~Article I, ~~s~~Section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent.

c. If any client desires to waive any rights under ~~a~~Article I, ~~s~~Section 26 of the Florida Constitution in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer shall provide each client a copy of the written waiver and shall afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, shall be given to each client to retain, and the lawyer shall keep a copy in the lawyer's file pertaining to the client. The waiver shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4-1.5(f)(5).

WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I, SECTION 26 OF THE FLORIDA CONSTITUTION

[no change]

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(E) The lawyer shall include in the contract an explanation of the scope of any subrogation or lien resolution services the lawyer will undertake at the conclusion of the primary matter. The lawyer shall not charge additional fees for handling lien resolution services if those additional fees, when combined with the lawyer's fees for handling the primary claim, would exceed the contingent fee schedule set forth in this subdivision. If extraordinary subrogation or lien resolution services are handled by others outside the primary lawyer's firm who will charge additional attorney's fees or costs to the client, these services shall only be provided after obtaining the client's informed written consent to the additional fees or costs. Any additional fees or costs charged by the other lawyer involved in the subrogation or lien resolution services must separately comply with the provisions of subdivisions (a) through (e) of this rule, and if the fees are contingent on the outcome of the lien resolution, the lien or subrogation resolution fees on their own must also comply with subdivision (f) of this rule. The lawyer representing the client solely in the extraordinary subrogation or lien resolution services shall not divide fees for those services with the lawyer representing the client in the primary matter.

(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over

the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. [no change]

(h) Credit Plans. [no change]

(i) Arbitration Clauses. [no change]

Comment

Bases or rate of fees and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Lawyers should also be mindful of any statutory, constitutional, or other requirements or restrictions on attorneys' fees.

In order to avoid misunderstandings concerning the nature of legal fees, written documentation is required when any aspect of the fee is nonrefundable. A written contract provides a method to resolve misunderstandings and to protect the lawyer in the event of continued misunderstanding. Rule 4-1.5 (e) does not require the client to sign a written document memorializing the terms of the fee. A letter from the lawyer to the client setting forth the basis or rate of the fee and the intent of the parties in regard to the nonrefundable nature of the fee is sufficient to meet the requirements of this rule.

All legal fees and contracts for legal fees are subject to the requirements of the Rules Regulating The Florida Bar. In particular, the test for reasonableness of legal fees found in rule 4-1.5(b) applies to all types of legal fees and contracts related to them.

Terms of payment [no change]

Prohibited contingent fees [no change]

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part noncontingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the noncontingent portion of the fee agreement. An attorney could properly charge and retain the noncontingent portion of the fee even if the matter was not successfully prosecuted or if the noncontingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned noncontingent fees. Thus, under such a contract a lawyer may demand or collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c. are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

Upon a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract.

The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5(f)(4)(B)(iii) is added to acknowledge the provisions of ~~a~~Article I, ~~s~~Section 26 of the Florida

Constitution, and to create an affirmative obligation on the part of an attorney contemplating a contingency fee contract to notify a potential client with a medical liability claim of the limitations provided in that constitutional provision. This addition to the rule is adopted prior to any judicial interpretation of the meaning or scope of the constitutional provision and this rule is not intended to make any substantive interpretation of the meaning or scope of that provision. The rule also provides that a client who wishes to waive the rights of the constitutional provision, as those rights may relate to attorney's fees, must do so in the form contained in the rule.

Rule 4-1.5(f)(4)(E) addresses the resolution of medical liens and subrogation claims that are directly related to the underlying personal injury or wrongful death case in which the lawyer represents a client. This subdivision requires that the lawyer undertaking the personal injury or wrongful death case set forth in the lawyer's fee contract with the client whether the lawyer will undertake the resolution of any medical liens or subrogation claims related to the personal injury or wrongful death case as part of the lawyer's services in that case. Extraordinary subrogation or lien resolution services are those that are beyond simple negotiation by the original lawyer. As part of every personal injury and wrongful death case, the lawyer handling the matter has an obligation under his contingent fee contract to make reasonable efforts to ascertain the existence of any medical liens and subrogation claims, advise the client of their existence, make reasonable efforts to negotiate liens that are negotiable, and disburse the amounts to lien holders and subrogation claimants as agreed by both the client and the third party and under the trust accounting rules set forth in chapter 5 of these rules. A lawyer is not obligated to file or defend a separate lawsuit to resolve medical liens or subrogation claims as part of the lawyer's original agreement to represent the client in the personal injury or wrongful death matter, unless the lawyer makes a specific agreement to do so. Additionally, some liens or claims are so complex that they cannot be resolved through standard negotiation that is normally undertaken by the lawyer handling the personal injury or wrongful death case. In such cases, the client's best interests may best be served by having the lien and/or subrogation matters resolved by another with significant experience in this field. Therefore, a lawyer may indicate in the lawyer's initial fee contract that the lawyer will not undertake any resolution of medical liens or subrogation claims beyond the identification, negotiation, and disbursement described above. In such circumstances, or when reasonable efforts to negotiate such liens or claims fail, the lawyer may, with the client's informed consent, either refer the client to a third party or hire a third party on behalf of the client to handle the medical lien and/or subrogation claim resolution who may charge an additional fee or cost to the client. If a lawyer provides the additional services, that lawyer's contract with the client must separately comply with all provisions of rule 4-1.5. The original lawyer handling the personal injury matter should not make an agreement to divide fees with the third party to whom the lawyer refers the additional lien and/or subrogation resolution services, as the division of fees would result in an excessive fee to the original lawyer and would likely exceed the contingent fee schedule. If the additional services are to be provided by another, the lawyer should first determine whether the services constitute the practice of law and, if so, should not refer those services to a nonlawyer or someone not authorized to provide the services. A lawyer's duties when a third party claims an interest in funds held by the lawyer are addressed in subdivision (f) and the comment of rule 5-1.1.

In a wrongful death case, often an estate must be opened to appoint a personal representative who will act on behalf of the estate of the decedent. In personal injury cases in which minors are involved, or in which a person is under a disability and cannot adequately act on his or her own behalf, often a guardianship must be established. The probate and guardianship matters are separate legal matters in which a separate reasonable fee may be charged. The probate and guardianship matters are not considered part of the personal injury or wrongful death matter for which the lawyer is subject to the contingent fee schedule set forth in this rule. Likewise, 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 personal injury or wrongful death matter for which the lawyer is subject to the contingent fee schedule set forth in this rule. The personal injury lawyer should clearly indicate in the lawyer's contract that the lawyer does not intend to undertake such ancillary services, if the lawyer does not intend to do so.

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client. Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar.

Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees.

Division of fee [no change]

Disputes over fees [no change]

Referral fees and practices [no change]

Credit Plans [no change]

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(a) Consent Required to Reveal Information. [no change]

(b) When Lawyer Must Reveal Information. [no change]

(c) When Lawyer May Reveal Information.

(d) Exhaustion of Appellate Remedies.

(e) Limitation on Amount of Disclosure.

Comment

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule 4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule 4-1.9(~~b~~c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[no further change]

* * *

RULE 4-1.10 IMPUTATION OF CONFLICTS OF INTEREST; GENERAL RULE

(a) Imputed Disqualification of All Lawyers in Firm. [no change]

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(c) Representing Interests Adverse to Clients of Formerly Associated Lawyer. When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by rules 4-1.6 and 4-1.9(b) and (c) that is material to the matter.

(d) Waiver of Conflict. [no change]

(e) Government Lawyers. [no change]

Comment

Definition of "firm" [no change]

Principles of imputed disqualification [no change]

Lawyers moving between firms [no change]

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not information about other clients.

Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by rules 4-1.6 and 4-1.9(b) and (c). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.

Adverse positions [no change]

RULE 4-1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Representation of Private Client by Former Public Officer or Employee. A lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to rule 4-1.9(b) and (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) Representation by Another Member of the Firm. [no change]

(c) Use of Confidential Government Information. [no change]

(d) Limits on Participation of Public Officer or Employee. [no change]

(e) Matter Defined.

Comment [no change]

RULE 4-1.12 FORMER JUDGE OR ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Representation of Private Client by Former Judge, Law Clerk, or Other Third-Party Neutral. [no change]

(b) Negotiation of Employment by Judge, Law Clerk, or Other Third-Party Neutral. [no change]

(c) Imputed Disqualification of Law Firm. [no change]

(d) Exemption for Arbitrator as Partisan. [no change]

Comment

This rule generally parallels rule 4-1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to rule 4-1.11. The term “adjudicative officer” includes such officials as judges pro tempore, referees, special masters, hearing officers, and other parajudicial officers and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2), and C of Florida’s Code of Judicial Conduct provide that a part-time judge, judge pro tempore, or retired judge recalled to active service may not “act as a lawyer in a proceeding in which [the lawyer] has served as a judge or in any other proceeding related thereto.” Although phrased differently from this rule, those rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See terminology. Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See

rule 4-2.4.
Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under rule 4-1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subdivision (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subdivision are met.

Requirements for screening procedures are stated in terminology. Subdivision (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to certified and court-appointed mediators.

* * *

RULE 4-1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, provided that:

(a) Sale of Practice or Area of Practice as an Entirety. [no change]

(b) Notice to Clients. [no change]

(c) Court Approval Required. [no change]

(d) Client Objections. [no change]

(e) Consummation of Sale. [no change]

(f) Existing Fee Contracts Controlling. [no change]

Comment

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. In accordance with the requirements of this rule, when a lawyer or an entire firm sells the practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See rules 4-5.4 and 4-5.6.

The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Similarly, a violation does not occur merely because a court declines to approve the substitution of counsel in the cases of a number of clients who could not be served with written notice of the proposed sale.

Sale of entire practice or entire area of practice [no change]

Client confidences, consent, and notice [no change]

Fee arrangements between client and purchaser [no change]

Other applicable ethical standards

Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client for all matters pending at the time of the sale. These include, for example, the seller's ethical obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see rule 4-1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see rule 4-1.7 regarding conflicts and see the terminology section of the preamble for the definition of informed consent); and the obligation to protect information relating to the representation ~~{~~[see rules 4-1.6, 4-1.8(b), and 4-1.9(b) and (c)~~}~~]. If the terms of the sale involve the division between purchaser and seller of fees from matters that arise subsequent to the sale, the fee-division provisions of rule 4-1.5 must be satisfied with respect to such fees. These provisions will not apply to the division of fees from matters pending at the time of sale.

If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see rule 4-1.16).

Applicability of this rule [no change]

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SUBCHAPTER 4-2. COUNSELOR

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RULE 4-2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) Definition. [no change]

(b) Communication With Unrepresented Parties. [no change]

Comment

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator, or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator, or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association, or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution. A Florida Bar member who is a certified or court-appointed mediator is governed by the applicable law and rules relating to

certified or court-appointed mediators.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subdivision (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this subdivision will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in rule 4-1.12.

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SUBCHAPTER 4-5. LAW FIRMS AND ASSOCIATIONS

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RULE 4-5.5 UNLICENSED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) Practice of Law. [no change]

(b) Prohibited Conduct. [no change]

(c) Authorized Temporary Practice by Lawyer Admitted in Another United States Jurisdiction. A lawyer admitted and authorized to practice law in another United States jurisdiction who has been neither disbarred or suspended from practice in any jurisdiction, nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule, may provide legal services on a temporary basis in Florida that:

(1) are undertaken in association with a lawyer who is admitted to practice in Florida and who actively participates in the matter; or

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction and the services are not services for which the forum requires pro hac vice admission:

(A) if the services are performed for a client who resides in or has an office in the lawyer's home state, or

(B) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(4) are not within subdivisions (c)(2) or (c)(3), and

(A) are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice, or

(B) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are undertaken pursuant to rule 1-3.12 after the determination of a major disaster by the court.

(d) Authorized Temporary Practice by Lawyer Admitted in a Non-United States Jurisdiction. A lawyer who is admitted only in a non-United States jurisdiction who is a member in good standing of a recognized legal profession in a foreign jurisdiction whose members are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, and who has been neither disbarred or suspended from practice in any jurisdiction nor disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule does not engage in the unlicensed practice of law in Florida when on a temporary basis the lawyer performs services in Florida that:

(1) are undertaken in association with a lawyer who is admitted to practice in Florida and who actively participates in the matter; or

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized; or

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding held or to be held in Florida or another jurisdiction and the services are not services for which the forum requires pro hac vice admission

(A) if the services are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is admitted to practice, or

(B) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(4) are not within subdivisions (d)(2) or (d)(3), and

(A) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization, or

(B) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) are governed primarily by international law or the law of a non-United States jurisdiction in which the lawyer is a member.

Comment

Subdivision (a) applies to unlicensed practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Regardless of whether the lawyer is admitted to practice law on a regular basis or is practicing as the result of an authorization granted by court rule or order or by the

law, the lawyer must comply with the standards of ethical and professional conduct set forth in these Rules Regulating the Florida Bar.

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See rule 4-5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Other than as authorized by law, a lawyer who is not admitted to practice in Florida violates subdivision (b) if the lawyer establishes an office or other regular presence in Florida for the practice of law. Presence may be regular even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida. Subdivision (b) also prohibits a lawyer who is not admitted to practice in Florida from appearing in a Florida court, before an administrative agency, or before any other tribunal in Florida unless the lawyer has been granted permission to do so. In order to be granted the permission, the lawyer must follow the applicable rules of the court, agency, or tribunal including, without limitation, the Florida Rules of Judicial Administration governing appearance by foreign attorneys.

There are occasions in which a lawyer admitted and authorized to practice in another United States jurisdiction or in a non-United States jurisdiction may provide legal services on a temporary basis in Florida under circumstances that do not create an unreasonable risk to the interests of his or her clients, the public, or the courts. Subdivisions (c) and (d) identify such circumstances. This rule does not authorize a lawyer to establish an office or other regular presence in Florida without being admitted to practice generally here. Furthermore, no lawyer is authorized to provide legal services pursuant to this rule if the lawyer is disbarred or suspended from practice in any jurisdiction or has been disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule. The contempt must be final and not reversed or abated.

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in Florida and may therefore be permissible under subdivision (c). Services may be "temporary" even though the lawyer provides services in Florida on a recurring basis or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subdivision (c) applies to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory, or commonwealth of the United States. The word "admitted" in subdivision (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice because, for example, the lawyer is on inactive status.

Subdivision (d) applies to lawyers who are admitted to practice law in a non-United States jurisdiction if the lawyer is a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority. Due to the similarities between the subsections, they will be discussed together. Differences will be noted.

Subdivisions (c)(1) and (d)(1) recognize that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in Florida. For these subdivisions to apply, the lawyer admitted to practice in Florida could not serve merely as a

conduit for the out-of-state lawyer, but would have to share actual responsibility for the representation and actively participate in the representation. To the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing in court or before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

Lawyers not admitted to practice generally in Florida may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to formal rules of the agency. Under subdivision (c)(2), a lawyer does not violate this rule when the lawyer appears before a tribunal or agency pursuant to such authority. As with subdivisions (c)(1) and (d)(1), to the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission pro hac vice prior to appearing in court or before a tribunal or to obtain admission pursuant to applicable rule(s) prior to appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

Subdivision (c)(2) also provides that a lawyer rendering services in Florida on a temporary basis does not violate this rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in Florida in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in Florida.

Subdivision (d)(2) is similar to subdivision (c)(2), however, the authorization in (d)(2) only applies to pending or potential proceedings before a tribunal to be held outside of the United States.

Subdivisions (c)(3) and (d)(3) permit a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in Florida if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are performed for a client who resides in or has an office in the lawyer's home state, or if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation if court rules or law so require. The lawyer must file a verified statement with The Florida Bar in arbitration proceedings as required by rule 1-3.11 unless the lawyer is appearing in an international arbitration as defined in the comment to that rule. A verified statement is not required if the lawyer first obtained the court's permission to appear pro hac vice and the court has retained jurisdiction over the matter. For the purposes of this rule, a lawyer who is not admitted to practice law in Florida who files more than 3 demands for arbitration or responses to arbitration in separate arbitration proceedings in a 365-day period shall be presumed to be providing legal services on a regular, not temporary, basis; however, this presumption shall not apply to a lawyer appearing in international arbitrations as defined in the comment to rule 1-3.11.

Subdivision (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in Florida that are performed for a client who resides or has an office in the jurisdiction in which the lawyer is authorized to practice or arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within subdivisions (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. When performing services which may be performed by nonlawyers, the lawyer remains subject to the Rules of Professional Conduct. Subdivisions (c)(3), (d)(3), and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such

a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through regular practice of law in a body of law that is applicable to the client's particular matter.

Subdivision (c)(5) allows a lawyer to engage in activities authorized by rule 1-3.12 after the determination of a major disaster by the appropriate court. That rule should be consulted for the parameters of any permitted practice.

Subdivision (d)(4) permits a lawyer admitted in a non-United States jurisdiction to provide certain services on a temporary basis in Florida that are performed for a client who resides in or has an office in the jurisdiction where the lawyer is authorized to practice or arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization but are not within subdivisions (d)(2) and (d)(3). The scope of the work the lawyer could perform under this provision would be limited to the services the lawyer may perform in the authorizing jurisdiction. For example, if a German lawyer came to the United States to negotiate on behalf of a client in Germany, the lawyer would be authorized to provide only those services that the lawyer is authorized to provide for that client in Germany. Subdivision (d)(5) permits a lawyer admitted in a non-United States jurisdiction to provide services in Florida that are governed primarily by international law or the law of a non-United States jurisdiction in which the lawyer is a member.

A lawyer who practices law in Florida pursuant to subdivisions (c), (d), or otherwise is subject to the disciplinary authority of Florida. A lawyer who practices law in Florida pursuant to subdivision (c) must inform the client that the lawyer is not licensed to practice law in Florida.

The Supreme Court of Florida has determined that it constitutes the unlicensed practice of law for a lawyer admitted to practice law in a jurisdiction other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide. The rule was adopted in 820 So. 2d 210 (Fla. 2002). The court first stated the proposition in 762 So. 2d 392, 394 (Fla. 1999). Subdivisions (c) and (d) do not authorize advertising legal services to prospective clients in Florida by lawyers who are admitted to practice in jurisdictions other than Florida. Whether and how lawyers may communicate the availability of their services to prospective clients in Florida is governed by rules 4-7.1 through 4-7.10.

A lawyer who practices law in Florida is subject to the disciplinary authority of Florida.

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SUBCHAPTER 4-7. INFORMATION ABOUT LEGAL SERVICES

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RULE 4-7.7 EVALUATION OF ADVERTISEMENTS

(a) Filing and Advisory Opinion. [no change]

(b) Contents of Filing. A filing with The Florida Bar as required or permitted by subdivision (a) shall consist of:

(1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily capable of duplication by The Florida Bar (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising);

(2) a transcript, if the advertisement or communication is on videotape or audiotape;

(3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;

(4) an accurate English translation, if the advertisement appears in a language other than English;

(5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and

(7) a fee paid to The Florida Bar, in an amount of $150 for ~~submissions~~each advertisement timely filed as provided in subdivision (a), or $250 for ~~submissions~~each advertisement not timely filed. This fee shall be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules.

(c) Change of Circumstances; Refiling Requirement. [no change]

(d) Maintaining Copies of Advertisements. [no change]

Comment

[no change]

* * *

RULE 4-7.10 LAWYER REFERRAL SERVICES

(a) When Lawyers May Accept Referrals. A lawyer shall not accept referrals from a lawyer referral service, and it shall be a violation of these Rules Regulating The Florida Bar to do so, unless the service:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that constitutes a division or sharing of fees, unless the service is a not-for-profit service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) carries or requires each lawyer participating in the service to carry professional liability insurance in an amount not less than $100,000 per claim or occurrence;

(5) furnishes The Florida Bar, on a quarterly basis, the names and Florida bar membership numbers of all lawyers participating in the service;

(6) furnishes The Florida Bar, on a quarterly basis, the names of all persons authorized to act on

behalf of the service;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the service or an attorney who accepts referrals from the service;

(8) neither represents nor implies to the public that the service is endorsed or approved by The Florida Bar, unless the service is subject to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public; ~~and~~

(10) affirmatively states in all advertisements that it is a lawyer referral service; and

(11) affirmatively states in all advertisements that lawyers who accept referrals from it pay to participate in the lawyer referral service.

(b) Responsibility of Lawyer. [no change]

(c) Definition of Lawyer Referral Service. [no change]

Comment

[no change]

SUBCHAPTER 4-8. MAINTAINING THE INTEGRITY OF THE PROFESSION

* * *

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) Reporting Misconduct of Other Lawyers. [no change]

(b) Reporting Misconduct of Judges. [no change]

(c) Confidences Preserved. This rule does not require disclosure of information:

(1) otherwise protected by rule 4-1.6 ~~or information~~;

(2) gained by a lawyer while serving as a mediator or mediation participant if the information is privileged or confidential under applicable law; or

(3) gained by a lawyer or judge while participating in an approved lawyers assistance program. ~~Provided further, however, that if a~~, unless the lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction ~~this limitation shall not be applicable and~~, in which case a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency.

(d) Limited Exception for LOMAS Counsel. [no change]

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4-1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Generally, Florida statutes provide that information gained through a "mediation communication" is privileged and confidential, including information which discloses professional misconduct occurring outside the mediation. However, professional misconduct occurring during the mediation is not privileged or confidential under Florida statutes.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

* * *

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS

SUBCHAPTER 5-1. GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney. [no change]

(b) Application of Trust Funds or Property to Specific Purpose. [no change]

(c) Liens Permitted. [no change]

(d) Controversies as to Amount of Fees. [no change]

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. [no change]

(f) Disputed Ownership of Trust Funds. [no change]

(g) Interest on Trust Accounts (IOTA) Program. [no change]

(h) Interest on Funds That Are Not Nominal or Short-Term. [no change]

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. [no

change]

(j) Disbursement Against Uncollected Funds. [no change]

(k) Overdraft Protection Prohibited. [no change]

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. See *Arnold, Matheny and Eagan, P.A.* v. *First American Holdings, Inc.*, 982 So.2d 628 (Fla. 2008).

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a

conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) Applicability. The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by ~~an attorney~~a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee und er a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and wherein this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules shall apply to matters wherein a choice of laws analysis indicates that such matters are governed by the laws of Florida.

As set forth in this rule, "lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in any court of the state of Florida. "Law firm" denotes a lawyer or lawyers in a private firm who handle client trust funds.

(b) Minimum Trust Accounting Records. ~~The following are the minimum trust accounting records that shall be maintained. These r~~Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required. The following are the minimum trust accounting records that shall be maintained:

(1) ~~A~~a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account~~.~~";

(2) ~~O~~original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying~~:(A)~~ the date and source of all trust funds received~~;~~ and~~(B)~~ the client or matter for which the funds were received~~.~~;

(3) ~~O~~original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must:

(A) be numbered consecutively, ~~if the copies~~

(B) include all endorsements and all other data and tracking information, and

(C) clearly identify the client or case by number or name in the memo area of the check~~.~~;

(4) ~~O~~other documentary support for all disbursements and transfers from the trust account including records of all electronic transfers from client trust accounts, including~~:~~:

(A) the name of the person authorizing the transfer;

(B) the name of the recipient;

(C) confirmation from the banking institution confirming the number of the trust account from which money is withdrawn; and

(D) the date and time the transfer was completed~~.~~;

(5) ~~A~~a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred~~.~~;

(6) ~~A~~a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

(A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred~~.~~; and

(7) ~~A~~all bank or savings and loan association statements for all trust accounts.

(c) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that shall be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer shall cause to be made monthly:

(A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and

(B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons therefor.

(2) At least annually, the lawyer shall prepare a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listings shall be retained for at least 6 years.

(4) The lawyer or law firm shall authorize, at the time the account is opened, and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel,

The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event the account is overdrawn or any trust check is dishonored or returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer shall file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors.

(d) Signing Trust Account Checks. A lawyer in a law firm or sole proprietorship that receives and disburses client or third-party funds or property through a trust account shall not sign any trust account check in blank (before the payee and the exact amount of payment are entered on the trust account check). A lawyer shall sign all trust account checks with the actual handwritten signature of the lawyer and shall not use a signature stamp or other means of signing checks drawn on a lawyer's or law firm's trust account that does not require the actual handwritten personal signature of a lawyer. All trust account checks must be signed by a lawyer.

(e) Electronic Wire Transfers. Authorized electronic transfers from a lawyer or law firm's trust account shall be limited to:

(1) money required to be paid to a client or third party on behalf of a client;

(2) expenses properly incurred on behalf of a client, such as filing fees or payment to third parties for services rendered in connection with the representation;

(3) money transferred to the lawyer for fees which are earned in connection with the representation and which are not in dispute; or

(4) money transferred from one trust account to another trust account.

(~~d~~f) Record Retention. A lawyer or law firm that receives and disburses client or third-party funds or property shall maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.

(~~e~~g) Audits. Any of the following shall be cause for The Florida Bar to order an audit of a trust account:

(1) failure to file the trust account certificate required by rule 5-1.2(c)(5);

(2) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;

(3) filing of a petition for creditor relief on behalf of ~~an attorney~~a lawyer;

(4) filing of felony charges against ~~an attorney~~a lawyer;

(5) adjudication of insanity or incompetence or hospitalization of ~~the attorney~~a lawyer under The Florida Mental Health Act;

(6) filing of a claim against ~~the attorney~~a lawyer with the Clients' Security Fund;

(7) when requested by the chair or vice chair of a grievance committee or the board of governors;

(8) upon court order; or

(9) upon entry of an order of disbarment, on consent or otherwise.

(~~f~~h) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule shall be at

the cost of the ~~attorney~~lawyer audited only when the audit reveals that the ~~attorney~~lawyer was not in substantial compliance with the trust accounting requirements. It shall be the obligation of any ~~attorney~~lawyer who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited thereto. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

(~~g~~i) Failure to Comply With Subpoena for Trust Accounting Records. Failure of a member to timely produce trust accounting records shall be considered as a matter of contempt and process in the manner provided in subdivision (d) and (f) of rule 3-7.11, Rules Regulating The Florida Bar.

CHAPTER 6. LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

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SUBCHAPTER 6-3. FLORIDA CERTIFICATION PLAN

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RULE 6-3.2 CERTIFICATION COMMITTEES

(a) Initial Certification Committees. For each certification area approved by the Supreme Court of Florida, a 9-member committee, bearing the name of the area, shall be appointed by the president of The Florida Bar, with the advice and consent of the board of governors. Initial committee appointees shall be eminent attorneys in each field, shall be members in good standing of The Florida Bar, shall have been admitted to The Florida Bar no less than 10 years, and must meet such other requirements as may in the future be promulgated by the board of legal specialization and education. Initial committee appointees shall be certified in the applicable area of practice by reason of appointment to that area's certification committee. The committee members shall hold office for 3 years and until their successors are appointed. The committee members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: 3 members shall serve until June 30 next following their appointment, 3 members shall serve until the second June 30 following their appointment, and 3 members shall serve until the third June 30 following their appointment.

(b) Subsequent Certification Committees. Subsequent certification committee appointees shall be appointed by the president-elect of The Florida Bar, must be certified in the area at the time of appointment, must be members in good standing of The Florida Bar, and must meet such other requirements as may be promulgated by the board of legal specialization and education. Upon the recommendation of the board of legal specialization and education and the approval of The Florida Bar Board of Governors, the composition of a certification committee may be adjusted to no less than 5 members or no more than 15 members. Committee members shall be appointed to staggered terms of office.

* * *

RULE 6-3.6 RECERTIFICATION

(a) Duration of Certification. [no change]

(b) Minimum Standards for Proficiency. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any certificate holder. The following minimum standards shall apply:

(1) A satisfactory showing of substantial involvement during the period of certification in the particular

area for which certification was granted.

(2) A satisfactory showing of such continuing legal education in the area for which certification is granted but in no event less than ~~10~~50 credit hours ~~per year~~during the 5-year period of certification.

(3) Satisfactory peer review and professional ethics record in accordance with rule 6-3.5(c)(6).

(4) Any applicant for recertification who is not, at the time of application for recertification, a member in good standing of The Florida Bar or any other bar or jurisdiction in which the applicant is admitted, as a result of discipline, disbarment, suspension, or resignation in lieu thereof, shall be denied recertification. The fact of a pending disciplinary complaint or malpractice action against an applicant for recertification shall not be the sole basis to deny recertification.

(5) The payment of any fees prescribed by the plan.

(c) Failure to Meet Standards for Recertification; Lapse of Certificate. [no change]

* * *

RULE 6-3.8 BOARD CERTIFIED JUDICIAL FELLOW

(a) Purpose. A member certified under the Florida Certification Plan who is appointed or elected as a judicial officer, as defined under this rule, shall be entitled to retain board certification in an honorary capacity as a "board certified judicial fellow." This title is intended to preserve and distinguish the achievement of board certification for members who are prohibited from practicing law, or who are ineligible to practice law, because of their judicial office and service.

(b) Definition. For purposes of this rule, the term "judicial officer" shall only include persons who are prohibited from practicing law, or who are ineligible to practice law, because of their status as judicial officers, including members of the United States Constitution Article I and III federal judiciary tribunals, justices of the Supreme Court of Florida, judges of the district courts of appeal, judges of the circuit and county courts, magistrates, state mediators, persons subject to the Code of Judicial Conduct, and any other judicial officer so designated by the board of legal specialization and education.

(c) Applicability. A board certified lawyer who becomes a "judicial officer" shall automatically be deemed a board certified judicial fellow.

(d) Qualifications. Standing as a board certified judicial fellow shall continue throughout the term of judicial service. If required for judicial service, the member must also maintain membership in good standing with The Florida Bar.

(e) Communication. The member may use the phrase "board certified judicial fellow" and include the practice area as a means by which to distinguish the achievement of board certification. If "board certified judicial fellow" is used, the member must include the practice area.

(f) Termination and Recertification Reinstatement of Board Certification. If a member no longer qualifies under this rule and resumes the practice of law as a member in good standing with The Florida Bar, the member may reapply to reinstate board certification or recertification. The reinstatement of board certification shall be based upon the satisfaction of standards recommended by the area certification committee and as deemed appropriate by, and at the discretion of, the board of legal specialization and education.

(g) Revocation. Existing rules relating to the revocation of board certification shall also apply to the board certified judicial fellow status.

(h) Exemption. During the 2 years following the effective date of this rule, any member who became a judicial officer while certified by The Florida Bar, and who relinquished such certification, may request board certified judicial fellow status if otherwise qualified under this rule.

(i) Annual Fee. Members classified as "board certified judicial fellows" shall pay an annual fee in an amount that shall not exceed one-third of the annual fee required for board certification.

RULE ~~6-3.8~~6-3.9 REVOCATION OF CERTIFICATION [no further change]

RULE ~~6-3.9~~6-3.10 MANNER OF CERTIFICATION [no further change]

RULE ~~6-3.10~~6-3.11 RIGHT OF APPEAL [no change]

RULE ~~6-3.11~~6-3.12 FEES

(a) Application Filing Fee. [no change]

(b) Examination/Certification Fee. [no change]

(c) Annual Fee. [no change]

(d) Recertification Extension Fee. [no change]

(e) Challenge/Petition Filing Fee. [no change]

(f) Appeal Filing Fee. [no change]

(g) Emeritus Application Fee. [no change]

(h) Judicial Fellow Annual Fee. This fee is assessed against each member classified as a board certified judicial fellow.

~~(h)~~ (i) Course Evaluation Fee. [no change]

~~(i)~~ (j) Individual Credit Approval Fee. [no change]

RULE ~~6-3.12~~6-3.13 CONFIDENTIALITY [no further change]

RULE ~~6-3.13~~6-3.14 AMENDMENTS [no further change]

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CHAPTER 10. RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW

*** * ***

SUBCHAPTER 10-2. DEFINITIONS

RULE 10-2.1 GENERALLY

Whenever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the state of Florida. ~~For purposes of this chapter:~~

(1) It shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form. Legal forms approved by the Supreme Court of Florida which may be completed as set forth herein shall only include and are limited to forms approved by the Supreme Court of Florida pursuant to rule 10-2.1(a) [formerly rule 10-1.1(b)] of the Rules Regulating The Florida Bar, the Family Law Forms contained in the Florida Family Law Rules of Procedure, and the Florida Supreme Court Approved Family Law Forms contained in the Florida Family Law Rules of Procedure.

(A) Except for forms filed by the petitioner in an action for an injunction for protection against domestic or repeat violence, the following language shall appear on any form completed by a nonlawyer and any individuals assisting in the completion of the form shall provide their name, business name, address, and telephone number on the form:

This form was completed with the assistance of:

Name of Individual

Name of Business

Address

Telephone Number

(B) Before a nonlawyer assists a person in the completion of a form, the nonlawyer shall provide the person with a copy of a disclosure which contains the following provisions:
(Name) told me that he/she is a nonlawyer and may not give legal advice, cannot tell me what my rights or remedies are, cannot tell me how to testify in court, and cannot represent me in court.
Rule 10-2.1(b) of the Rules Regulating The Florida Bar defines a paralegal as a person who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. Only persons who meet the definition may call themselves paralegals. (Name) informed me that he/she is not a paralegal as defined by the rule and cannot call himself/herself a paralegal.
(Name) told me that he/she may only type the factual information provided by me in writing into the blanks on the form. (Name) may not help me fill in the form and may not complete the form for me. If using a form approved by the Supreme Court of Florida, (Name) may ask me factual questions to fill in the blanks on the form and may also tell me how to file the form.

_____ I can read English

_____ I cannot read English but this notice was read to me by (Name) in (Language) which I understand.

(C) A copy of the disclosure, signed by both the nonlawyer and the person, shall be given to the person to retain and the nonlawyer shall keep a copy in the person's file. The nonlawyer shall also keep copies for at least 6 years of all forms given to the person being assisted. The disclosure does not act as or constitute a waiver, disclaimer, or limitation of liability.

(2) It shall constitute the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to use the title paralegal, legal assistant, or other similar term in offering to provide or in providing services directly to the public.

(3) It shall constitute the unlicensed practice of law for a lawyer admitted in a state other than Florida

~~to advertise to provide legal services in Florida which the lawyer is not authorized to provide.~~

(b) Paralegal or Legal Assistant. A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. A nonlawyer or a group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the lawyer supervision required under this rule. It shall constitute the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant to use the title paralegal, legal assistant, or other similar term in offering to provide or in providing services directly to the public.

(c) Nonlawyer or Nonattorney. For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar. A suspended lawyer, while a member of The Florida Bar during the period of suspension as provided elsewhere in these rules, does not have the privilege of practicing law in Florida during the period of suspension. For purposes of this chapter, it shall constitute the unlicensed practice of law for a lawyer admitted in a state other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide.

(d) This Court or the Court. [no change]

(e) Bar Counsel. [no change]

(f) Respondent. [no change]

(g) Referee. [no change]

(h) Standing Committee.

(i) Circuit Committee. [no change]

(j) UPL Counsel. [no change]

(k) UPL. [no change]

(*l*) The Board or Board of Governors. [no change]

(m) Designated Reviewer. [no change]

(n) Executive Committee. [no change]

RULE 10-2.2 FORM COMPLETION BY A NONLAWYER

(a) Supreme Court Approved Forms. It shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communication to assist a self-represented person in the completion of blanks on a Supreme Court Approved Form. In assisting in the completion of the form, oral communication by nonlawyers is restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the self-represented person how to file the form. The nonlawyer may not give legal advice or give advice on remedies or courses of action. Legal forms approved by the Supreme Court of Florida which may be completed as set forth herein shall only include and are limited to the following forms, and any other legal form whether promulgated or approved by the Supreme Court is not a Supreme Court Approved Form for the purposes of this rule:

(1) forms which have been approved by the Supreme Court of Florida specifically pursuant to the authority of rule 10-2.1(a) [formerly rule 10-1.1(b)] of the Rules Regulating The Florida Bar;

(2) the Family Law Forms contained in the Florida Family Law Rules of Procedure; and

(3) the Florida Supreme Court Approved Family Law Forms contained in the Florida Family Law Rules of Procedure.

(b) Forms Which Have Not Been Approved By The Supreme Court of Florida.

(1) It shall not constitute the unlicensed practice of law for a nonlawyer to sell legal forms and kits and engage in a secretarial service, typing forms for self-represented persons by copying information given in writing by the self-represented person into the blanks on the form. The nonlawyer must transcribe the information exactly as provided in writing by the self-represented person without addition, deletion, correction, or editorial comment. The nonlawyer may not engage in oral communication with the self-represented person to discuss the form or assist the self-represented person in completing the form.

(2) It shall constitute the unlicensed practice of law for a nonlawyer to give legal advice, to give advice on remedies or courses of action, or to draft a legal document for a particular self-represented person. It also constitutes the unlicensed practice of law for a nonlawyer to offer to provide legal services directly to the public.

(c) As To All Legal Forms.

(1) Except for forms filed by the petitioner in an action for an injunction for protection against domestic or repeat violence, the following language shall appear on any form completed by a nonlawyer and any individuals assisting in the completion of the form shall provide their name, business name, address, and telephone number on the form:
This form was completed with the assistance of:

.....(Name of Individual).....

.....(Name of Business).....

.....(Address).....

.....(Telephone Number).....

(2) Before a nonlawyer assists a person in the completion of a form, the nonlawyer shall provide the person with a copy of a disclosure which contains the following provisions:

.....(Name) ..... told me that he/she is a nonlawyer and may not give legal advice, cannot tell me what my rights or remedies are, cannot tell me how to testify in court, and cannot represent me in court.

Rule 10-2.1(b) of the Rules Regulating The Florida Bar defines a paralegal as a person who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. Only persons who meet the definition may call themselves paralegals. .....(Name)..... informed me that he/she is not a paralegal as defined by the rule and cannot call himself/herself a paralegal.

.....(Name) ..... told me that he/she may only type the factual information provided by me in writing into the blanks on the form. Except for typing, ...(Name)..... may not tell me what to put in the form and may not complete the form for me. However, if using a form approved by the Supreme Court of Florida, ...(Name)..... may ask me factual questions to fill in the blanks on the form and may also tell

me how to file the form.

. . . . . I can read English

. . . . . I cannot read English but this notice was read to me by …..(Name)….. in …..(Language)….. which I understand.

(3) A copy of the disclosure, signed by both the nonlawyer and the person, shall be given to the person to retain and the nonlawyer shall keep a copy in the person's file. The nonlawyer shall also retain copies for at least 6 years of all forms given to the person being assisted. The disclosure does not act as or constitute a waiver, disclaimer, or limitation of liability.

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SUBCHAPTER 10-6. PROCEDURES FOR INVESTIGATION

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RULE 10-6.2 SUBPOENAS

(a) Issuance by Court. Upon receiving a written application of the chair of the standing committee or of a circuit committee or bar counsel alleging facts indicating that a person or entity is or may be practicing law without a license and that the issuance of a subpoena is necessary for the investigation of such unlicensed practice, the clerk of the circuit court in which the committee is located or the clerk of the Supreme Court of Florida shall issue subpoenas in the name, respectively, of the chief judge of the circuit or the chief justice for the attendance of any person or production of books and records or both before counsel or the investigating circuit committee or any member thereof at the time and place designated in such application. ~~Such subpoenas shall be returnable to the circuit court of the residence or place of business of the person subpoenaed.~~ A like subpoena shall issue upon application by any person or entity under investigation.

(b) Failure to Comply. Failure to comply with any subpoena shall constitute a contempt of court and may be punished by the Supreme Court of Florida or by the circuit court of the circuit ~~to~~in which the subpoena ~~is returnable~~was issued or where the contemnor may be found~~. The circuit court to which the subpoena is returnable shall have power to enter~~ by such orders as may be necessary for the enforcement of the subpoena.

RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

(a) Circuit Committee Action. Upon concluding its investigation, the circuit committee shall ~~forward a~~ report to bar counsel regarding the disposition of those cases closed, those cases where a cease and desist affidavit has been accepted, those cases where a cease and desist affidavit with monetary penalty has been recommended, and those cases where litigation is recommended. A majority of those present is required for all circuit committee recommendations; however, the vote may be taken by mail or telephone rather than at a formal meeting. All recommendations for a cease and desist affidavit with monetary penalty shall be reviewed by the standing committee for final approval. All recommendations for litigation under these rules shall be reviewed by the standing committee and a designated reviewer for final approval prior to initiating litigation.

(b) Action by Bar Counsel. [no change]

(c) Review by Designated Reviewer. [no change]

SUBCHAPTER 10-7. PROCEEDINGS BEFORE A REFEREE

RULE 10-7.1 PROCEEDINGS FOR INJUNCTIVE RELIEF

(a) Filing Complaints. [no change]

(b) Petitions for Injunctive Relief. [no change]

(c) Proceedings Before the Referee. [no change]

(d) Referee's Report. [no change]

(e) Record. [no change]

(f) Review by the Supreme Court of Florida.

(1) Objections to the report of the referee shall be filed with the court by any party aggrieved, within 30 days after the filing of the report, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

If the objector desires, a brief or memorandum of law in support of the objections may be filed at the time the objections are filed. Any other party may file a responsive brief or memorandum of law within 20 days of service of the objector's brief or memorandum of law. The objector may file a reply brief or memorandum of law within ~~10~~20 days of service of the opposing party's responsive brief or memorandum of law. Oral argument will be allowed at the court's discretion and will be governed by the provisions of the Florida Rules of Appellate Procedure.

(2) Upon the expiration of the time to file objections to the referee's report, the court shall review the report of the referee, together with any briefs or memoranda of law or objections filed in support of or opposition to such report. After review, the court shall determine as a matter of law whether the respondent has engaged in the unlicensed practice of law, whether the respondent's activities should be enjoined by appropriate order, whether costs should be awarded, whether restitution should be ordered, whether civil penalties should be awarded, and whether further relief shall be granted. Any order of the court that contains the imposition of restitution or civil penalties shall contain a requirement that the respondent send the restitution or penalty to the UPL Department of The Florida Bar. The restitution shall be made payable to the complainant(s) specified in the court's order. The Florida Bar shall remit all restitution received to the complainant(s). If The Florida Bar cannot locate the complainant(s) within 4 months, the restitution shall be returned to the respondent. The civil penalty shall be made payable to the Supreme Court of Florida. The Florida Bar shall remit all penalties received to the court. In the event respondent fails to pay the restitution as ordered by the court, The Florida Bar is authorized to file a petition for indirect criminal contempt as provided elsewhere in this chapter.

(g) Issuance of Preliminary or Temporary Injunction. [no change]

RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT

(a) Petitions for Indirect Criminal Contempt. [no change]

(b) Indigency of Respondent. [no change]

(c) Proceedings Before the Referee. [no change]

(d) Record. [no change]

(e) Review by the Supreme Court of Florida. The judgment and recommended sentence, upon a finding of "guilty," together with the entire record of proceedings shall then be forwarded to this court for approval, modification, or rejection based upon the law. The respondent may file objections, together with a supporting brief or memorandum of law, to the referee's judgment and recommended sentence within 30 days of the date of filing with the court of the referee's judgment, recommended sentence, and record of proceedings, or in the case where a party seeks review of a referee's denial to supplement or remove an item from the record, within 30 days after the court issues its ruling on that matter. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.
The Florida Bar may file a responsive brief or memorandum of law within 20 days after service of respondent's brief or memorandum of law. The respondent may file a reply brief or memorandum of law within ~~10~~20 days after service of The Florida Bar's responsive brief or memorandum of law.

(f) Fine or Punishment. [no change]

(g) Costs and Restitution. [no change]

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SUBCHAPTER 10-8. CONFIDENTIALITY

RULE 10-8.1 FILES

(a) Files Are Property of Bar. [no change]

(b) UPL Record. [no change]

(c) Limitations on Disclosure. [no change]

(d) Disclosure of Information. [no change]

(e) Response to Inquiry. Representatives of The Florida Bar, authorized by the board of governors, shall reply to inquiries regarding a pending or closed unlicensed practice of law investigation as follows:

(1) *Cases Opened Prior To November 1, 1992*. Cases opened prior to November 1, 1992, shall remain confidential.

(2) *Cases Opened On or After November 1, 1992*. In any case opened on or after November 1, 1992, the fact that an unlicensed practice of law investigation is pending and the status of the investigation shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(3) *Recommendations of Circuit Committee*. The recommendation of the circuit committee as to the disposition of an investigation opened on or after November 1, 1992, shall be public information; however, the UPL record shall remain confidential except as provided in rule 10-8.1(e)(4).

(4) *Final Action by Circuit Committee, Standing Committee, Designated Reviewer, and Bar Counsel*. The final action on investigations opened on or after November 1, 1992, shall be public information. The UPL record in cases opened on or after November 1, 1992, that are closed by the circuit committee, the standing committee, or bar counsel as provided elsewhere in these rules, cases where a cease and desist affidavit has been accepted, and cases where a litigation recommendation has been approved by a designated reviewer as provided elsewhere in these rules, shall be public information and may be provided upon specific inquiry except that information that remains confidential under rule 10-8.1(c). The Florida Bar may charge a reasonable fee for identification of and photocopying the documents.

(f) Production of UPL Records Pursuant to Subpoena. [no change]

(g) Notice to Judges. [no change]

(h) Response to False or Misleading Statements. [no change]

(i) Providing Otherwise Confidential Material. [no change]

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CHAPTER 14. GRIEVANCE MEDIATION AND FEE ARBITRATION

SUBCHAPTER 14-1. ESTABLISHMENT

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RULE 14-1.2 JURISDICTION

(a) Fee Arbitration. The program shall have jurisdiction to resolve disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fee paid, charged, or claimed for legal services rendered by a member of The Florida Bar when the parties to the dispute agree to arbitrate ~~hereunder~~under this program either by written contract that complies with the requirements of subdivision (i) of rule 4-1.5 or by a request for arbitration signed by all parties, or as a condition of probation or as a part of a discipline sanction as authorized elsewhere in these Rules Regulating The Florida Bar. Jurisdiction shall be limited to matters in which:

(1) there is no bona fide disputed issue of fact other than the amount of or entitlement to legal fees; and

(2) the amount of attorneys' fees in controversy is $100,000 or less; and

(3) it is estimated by all parties that all the evidence bearing on the disputed issues of fact may be heard in 8 hours or less.

The program shall not have jurisdiction to resolve disputes involving matters in which a court has taken jurisdiction to determine and award a reasonable fee to a party or that involve fees charged that constitute a violation of the Rules Regulating
The Florida Bar, unless specifically referred to the program by the court or by bar counsel.

The program shall have authority to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

(b) Grievance Mediation. [no change]

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SUBCHAPTER 14-6. NATURE; ENFORCEMENT OF AWARD; EFFECT OF FAILURE TO PAY

RULE 14-6.1 BINDING NATURE; ENFORCEMENT; AND EFFECT OF FAILURE TO PAY AWARD

(a) Binding Determination. [no change]

(b) Enforcement of Determination. [no change]

(c) Effect of Failure to Pay Award. Failure of a member of the bar to pay an award within ~~90~~30 days

of the date on which the award became final, without just cause for such failure, shall result in the member being delinquent and not authorized to practice law, as provided elsewhere in these rules defining delinquent members.

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CHAPTER 20. FLORIDA REGISTERED PARALEGAL PROGRAM

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SUBCHAPTER 20-2. DEFINITIONS

RULE 20-2.1 GENERALLY

For purposes of this chapter, the following terms shall have the following meaning:

(a) Paralegal. [no change]

(b) Florida Registered Paralegal. [no change]

(c) Paralegal Work and Paralegal Work Experience. [no change]

(d) Approved Paralegal Program. An approved paralegal program is a program approved by the American Bar Association ("ABA") or a program that is in substantial compliance with the ABA guidelines by being an institutional member of the American Association for Paralegal Education (AAfPE) and accredited by a nationally recognized accrediting agency approved by the United States Department of Education.

(e) Employing or Supervising Attorney. [no change]

(f) Board. [no change]

(g) Respondent. [no change]

(h) Designated Reviewer. [no change]

(i) Probable Cause. [no change]

(j) Bar Counsel. [no change]

SUBCHAPTER 20-3. ELIGIBILITY REQUIREMENTS

RULE 20-3.1 REQUIREMENTS FOR REGISTRATION

In order to be a Florida Registered Paralegal under this chapter, an individual must meet 1 of the following requirements.

(a) Educational and Work Experience Requirements. A person may become a Florida Registered Paralegal by meeting 1 of the following education and paralegal work experience requirements:

(1) a bachelor's degree in paralegal studies from an approved paralegal program, plus a minimum of 1 year of paralegal work experience;

(2) a bachelor's degree or higher degree other than a juris doctorate from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 3 years of paralegal work experience;

(3) an associate's degree in paralegal studies from an approved paralegal program, plus a minimum of 2 years of paralegal work experience;

(4) an associate's degree from an institution accredited by a nationally recognized accrediting agency approved by the United States Department of Education or the Florida Department of Education, plus a minimum of 4 years of paralegal work experience; or

(5) a juris doctorate degree from an American Bar Association accredited institution, plus a minimum of 1 year of paralegal work experience.

(b) Certification. [no change]

(c) Grandfathering. [no change]

SUBCHAPTER 20-4. REGISTRATION

RULE 20-4.1 GENERALLY

The following shall be filed with The Florida Bar by an individual seeking to be registered as a Florida Registered Paralegal:

(a) Educational, Certification, or Experience Requirement. [no change]

(b) Statement of Compliance. [no change]

(c) Registration Fee. [no change]

(d) Review by The Florida Bar. Upon receipt of the items set forth in subdivision 20-4.1(a)-(c), The Florida Bar shall review the items for compliance with this chapter. Any incomplete submissions will be returned. If the individual meets all of the requirements of this chapter, the individual shall be added to the roll of Florida Registered Paralegals and a certificate evidencing such registration shall be issued. If there is an open unlicensed practice of law complaint against the individual, the application will be held as pending until the investigation is resolved.

(e) Annual Renewal; Content and Registration Fee. The registration pursuant to this subdivision shall be annual and consistent with that applicable to an attorney licensed to practice in the state of Florida. An annual registration fee shall be set by the board in an amount not more than the annual fees paid by inactive members of The Florida Bar. The renewal shall contain a statement that the individual is primarily performing paralegal work as defined elsewhere in this chapter and a statement that the individual is not ineligible for registration set forth elsewhere in this chapter. A Florida Registered Paralegal who is not primarily performing paralegal work shall not be eligible for renewal of the registration but may reapply for registration. If there is an open unlicensed practice of law complaint against the individual, renewal will be held as pending until the investigation is resolved.

SUBCHAPTER 20-5. INELIGIBILITY FOR REGISTRATION OR RENEWAL

RULE 20-5.1 GENERALLY

The following individuals are ineligible for registration as a Florida Registered Paralegal or for renewal of a registration that was previously granted:

(a) a person who is currently suspended or disbarred or who has resigned in lieu of discipline from the practice of law in any state or jurisdiction;

(b) a person who has been convicted of a felony in any state or jurisdiction and whose civil rights have

not been restored;

(c) a person who has been found to have engaged in the unlicensed (unauthorized) practice of law in any state or jurisdiction within 7 years of the date of application;

(d) a person whose registration or license to practice has been terminated or revoked for disciplinary reasons by a professional organization, court, disciplinary board, or agency in any jurisdiction;

(e) a person who is no longer primarily performing paralegal work as defined elsewhere in these rules; ~~or~~

(f) a person who fails to comply with prescribed continuing education requirements as set forth elsewhere in this chapter; or

(g) a person who is providing services directly to the public as permitted by case law and subchapter 10-2 of these rules.

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SUBCHAPTER 20-7. CODE OF ETHICS AND RESPONSIBILITY

RULE 20-7.1 GENERALLY

A Florida Registered Paralegal shall adhere to the following Code of Ethics and Responsibility:

(a) Disclosure. A Florida Registered Paralegal shall disclose his or her status as a Florida Registered Paralegal at the outset of any professional relationship with a client, attorneys, a court or administrative agency or personnel thereof, and members of the general public. Use of the initials FRP meets the disclosure requirement only if the title paralegal also appears. For example, J. Doe, FRP, Paralegal. Use of the word "paralegal" alone also complies.

(b) Confidentiality and Privilege. [no change]

(c) Appearance of Impropriety or Unethical Conduct. [no change]

(d) Prohibited Conduct. [no change]

(e) Performance of Services.

(f) Competence. [no change]

(g) Conflict of Interest. [no change]

(h) Reporting Known Misconduct. [no change]

[Revised: 09-24-2010]