

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES
REGULATING THE FLORIDA BAR –
10-9.1 (PROCEDURE FOR ISSUANCE OF
ADVISORY OPINIONS ON THE
UNLICENSED PRACTICE OF LAW)

CASE NO. SC11-649

**COMMENTS OF FLORIDA BAR MEMBER TIMOTHY P. CHINARIS
REGARDING PROPOSED AMENDMENT TO RULE 10-9.1(c)**

COMES NOW Florida Bar member Timothy P. Chinaris, who files the following comments in opposition to The Florida Bar's Petition asking this Court to amend rule 10-9.1(c), Rules Regulating The Florida Bar, and states:

1. The undersigned is a member in good standing of The Florida Bar.
2. The undersigned served as Ethics Director of The Florida Bar from 1989 to 1997, served as a member and vice-chair of the Bar's Unlicensed Practice of Law Committee, is a member and past chair of the Bar's Professional Ethics Committee, teaches legal ethics at an ABA-approved law school, and consults with and represents lawyers and others on legal ethics and unlicensed practice of law matters. These comments are those of the undersigned individually.
3. These comments are filed in response to the Petition filed by the Bar in this cause on April 1, 2011.

4. The Bar’s Petition accurately states that, in *Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905, 908 (Fla. 2101), this Court directed the Bar to propose changes to rule 10-9.1 that would permit the Bar’s Unlicensed Practice of Law Committee to issue a formal advisory opinion, despite the existence of a pending case or controversy, where this Court has not previously ruled whether the activity in question is the unlicensed practice of law.

5. The Bar’s proposed language, however, does not fully comply with this Court’s directive in *Goldberg*.

6. In *Goldberg* this Court expressly recognized that either a plaintiff or a defendant in a civil action for damages allegedly caused by the unlicensed practice of law should be able to obtain an advisory opinion from the Bar’s Unlicensed Practice of Law Committee under appropriate circumstances. This Court stated that “there may be cases in which this Court has previously determined that the conduct at issue is the practice of law, but the defendant believes its identity is relevant to the determination of whether the conduct is actually the unauthorized practice of law.” *Goldberg*, 35 So. 3d at 908 (emphasis added). In such situations, this Court continued, “the defendant is also free” to seek an advisory opinion from the Bar. *Id.* (Emphasis added.)

7. Despite this Court’s discussion of defendants in *Goldberg*, the proposed rule appears to authorize the Bar’s Unlicensed Practice of Law Committee to issue

advisory opinions only to plaintiffs. Specifically, the Bar’s proposed language states: “However, the committee shall issue a formal advisory opinion under circumstances described by the court in *Harold Goldberg v. Merrill Lynch Credit Corporation*, 35 So. 3d 905 (Fla. 2010) when the petitioner has filed a lawsuit and that suit has been stayed or voluntarily dismissed without prejudice.” (Emphasis added.)

8. In order to amend the rule as directed by this Court in *Goldberg*, the undersigned respectfully suggests that the following language be substituted for that proposed by the Bar: “However, the committee shall issue a formal advisory opinion under circumstances described by the court in *Harold Goldberg v. Merrill Lynch Credit Corporation*, 35 So. 3d 905 (Fla. 2010) when the petitioner ~~has filed~~ is a party to a lawsuit and that suit has been stayed or voluntarily dismissed without prejudice.”

9. For the foregoing reasons, this Court should decline to adopt the Bar’s proposed amendment to rule 10-9.1(c), Rules Regulating The Florida Bar, and instead should adopt the alternative language suggested herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

U.S. Mail on this 6th day of April 2011, to:

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CERTIFICATE OF TYPE SIZE AND STYLE

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

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