

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES CASE NO. SC16-
REGULATING THE FLORIDA BAR -
BIENNIAL PETITION

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

The Florida Bar (the bar) petitions this Court for an order amending the Rules Regulating the Florida Bar and states:

Jurisdictional Statement

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors) under R. Reg. Fla. Bar 1-12.1.

Organization of Petitions

The bar's biennial submission has been divided into 3 separate petitions, with all 3 petitions filed simultaneously. The first petition, entitled *In Re: Amendments to the Rules Regulating the Florida Bar - Biennial Petition*, encompasses those rules that the bar believes may require more consideration and reflection by this Court. The second petition, entitled *In Re: Amendments to the Rules Regulating the Florida Bar – Biennial Housekeeping*, comprises those rules that the bar believes may require less contemplation by this Court and for which this Court may be inclined to expedite review. Many amendments in the housekeeping petition involved editorial changes, housekeeping amendments to update the rules based on the passage of prior amendments, changes to codify long-standing practice, changes to court rules, and other amendments likely to require less of this Court's attention than the proposals in the first petition. The third petition, entitled *In Re: Amendments to the Rules Regulating the Florida Bar – Biennial Rules 11-1.3 and 11-1.9*, includes amendments solely to rules 11-1.3 and 11-1.9 and addresses issues that may require more consideration and reflection by this Court, and for which the bar seeks oral argument.

This petition is the regular biennial filing with amendments to multiple rules that may require more of this Court's time and reflection and includes proposed new rules or amendments to existing rules that were approved by the Board of Governors between July 2014 and July 2016.

Organization of Amendments

The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. This section 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.

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

Amendments

CHAPTER 1 GENERAL

SUBCHAPTER 1-3 MEMBERSHIP

RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

Explanation: Adds new subdivision (a)(2), adds that inactive members are members in good standing solely for the purpose of obtaining a certificate of good standing, but no other purpose. Within subdivision (c), changes "membership in good standing" to "active" membership and "eligible to practice law" regarding reinstatement.

Reasons: An inactive bar member requested that the Board of Governors consider amending this rule to allow an inactive member to be considered a member in good standing. Inactive members in some states cannot be admitted as authorized house counsel or admitted to practice because of the classification of not in good standing. Additionally, inactive members, who have not been found to

violate any bar rules, feel insulted by the designation "not in good standing." This amendment allows inactive members to be members in good standing, but only for the purpose of obtaining a certificate of good standing, and they will remain ineligible to practice law in Florida.

Source: Bar member

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-1 by voice and e-mail vote on February 24, 2014.
- Program Evaluation Committee approved 11-0 on strategic basis on March 27, 2014.
- Budget Committee approved fiscal impact 7-0 by e-mail vote on May 1, 2014.
- Program Evaluation Committee approved 14-0 on substantive and strategic basis on July 23, 2015.
- Rules Committee approved 5-0 on procedural basis by voice and e-mail vote on August 13, 2015.
- Budget Committee approved 5-0 by e-mail vote on October 26, 2015.

Board Action: Board of Governors approved on voice vote without objection on December 4, 2015.

RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

Explanation: Within subdivisions (c)(4) and (c)(8), provides an exception to the prohibition against holding out as being able to practice law or give legal advice on Florida matters for inactive members who are certified as emeritus lawyers under chapter 12 of The Rules Regulating the Florida Bar.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice to increase the pool of lawyers who are eligible to serve as emeritus lawyers. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved on substantive and procedural basis by vote of 4-0 on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

SUBCHAPTER 1-7 MEMBERSHIP FEES AND FISCAL CONTROL
RULE 1-7.5 RETIRED, INACTIVE, DELINQUENT MEMBERS

Explanation: Adds an exception to the prohibition against practicing law in Florida for inactive or retired lawyers who are certified as emeritus lawyers under chapter 12 of the Rules Regulating the Florida Bar.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice to increase the pool of lawyers who are eligible to serve as Emeritus lawyers. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

SUBCHAPTER 1-12 AMENDMENTS

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

Explanation: Within subdivisions (g), and (h), changes the requirement of publication of the full text of proposed amendments from the bar *News* to the bar's website and adds that a summary of rules amendments to be filed with this Court will be published in the bar *News*. Within subdivision (h), clarifies that a summary of this Court's final action on amendments will be published in the bar *News*.

Reasons: This Court declined to omit requirement of publishing the full text of proposed amendments to Rules Regulating the Florida Bar in the bar *News* in *In Re: Amendments to The Rules Regulating the Florida Bar (Biannual Report)*, 101 So.3d 807 (Fla. 2012), Case No. SC10-1967. Publication on the web lowers costs and allows earlier publication to the membership since printer deadlines would not be an issue. Because space is not an issue on website publication, the bar would also be able to publish more information regarding proposed amendments, to provide more information to bar members and the public. If approved, the bar would continue to publish a summary of amendments in the bar *News* to give notice to bar members of proposed amendments directing bar members to the website for additional information, including the full text.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis on June 2, 2015.
- Budget Committee approved fiscal impact 5-0 on June 24, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on July 23, 2015

Board Action: Board of Governors approved on voice vote with objection on October 16, 2015.

CHAPTER 3 RULES OF DISCIPLINE

SUBCHAPTER 3-2 DEFINITIONS

RULE 3-2.1 GENERALLY

Explanation: Rule is amended to comply with this Court's Guidelines for Rules Submissions. There are no substantive changes to the rule.

Reasons: Changes bring rules up to date with this Court's Guidelines for Rules Submissions to avoid confusion.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 5-0 on March 27, 2014.
- Rules Committee approved 7-0 on procedural basis on June 20, 2014.
- Program Evaluation Committee approved 13-0 on strategic basis on July 24, 2014.
- Budget Committee approved fiscal impact 6-0 on September 17, 2014.

Board Action: Board of Governors approved on consent calendar on October 24, 2014.

RULE 3-2.1 GENERALLY

Explanation: Amends Rule 3-2.1 to add subpart (i) defining "inquiry" as used in chapter 3 regarding opening a bar discipline investigation after an inquiry is made. Subsequent subdivisions are renumbered.

Reasons: Clarifies meaning of "inquiry" in Chapter 3 and particularly in Rule 3-7.16 as part of this Court's request for clarification of Rule 3-7.16 by letter dated March 12, 2015, a copy of which appears in Appendix D.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action

- Disciplinary Procedure Committee approved 8-0 on substantive basis on December 3, 2015.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 15, 2015.
- Program Evaluation Committee approved 10-1 on strategic basis on January 28, 2016.
- Rules Committee approved 7-0 on procedural basis on February 2, 2016.

Board Action: Board of Governors approved on consent calendar by voice vote without objection on March 11, 2016.

SUBCHAPTER 3-7 PROCEDURES

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

Explanation: Within subdivision (e), adds that the bar may re-open a case in which no probable cause has been found if there is later a reason to re-open. Non-substantive edits conform the rule to this Court's Guidelines for Rules Submissions.

Reasons: The rule is amended to clarify the meaning of a no probable cause finding by the Board of Governors and to comply with this Court's Guidelines for Rules Submissions.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 5-0 on substantive basis on December 12, 2014.
- Rules Committee approved 5-0 by voice and e-mail vote on April 16, 2015.
- Budget Committee approved 6-0 by e-mail vote on May 4, 2015.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 21, 2015.

Board Action: Board of Governors approved on consent calendar on July 24, 2015.

RULE 3-7.16 LIMITATION ON TIME TO BRING COMPLAINT

Explanation: Subdivision (a) of the rule is re-organized, clarifies when inquiries are time barred, and adds that written inquiries must be made to Lawyer Regulation in bar headquarters in Tallahassee.

Reasons: Amendment complies with this Court's letter of March 12, 2015, asking the bar to review and clarify the provisions of Rule 3-7.16. The amendment to subdivision (a) benefits complainants and respondents alike by clarifying the

limitations provision in Rule 3-7.16(a). A copy of the letter is attached in Appendix D.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 8-0 on substantive basis on December 3, 2015.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 15, 2015.
- Program Evaluation Committee approved 10-0 on strategic basis on January 28, 2016.
- Rules Committee approved 7-0 on procedural basis on February 2, 2016.

Board Action: Board of Governors approved unanimously on May 20, 2016.

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT

PREAMBLE – A LAWYER’S RESPONSIBILITIES

Explanation: In terminology, definition of "lawyer," deletes "any court of" so that the term "lawyer" includes both Florida bar members and other lawyers authorized to practice in the State of Florida.

Reasons: The current rule does not address the lawyers who are not Florida bar members but are authorized to practice in Florida. For example, in the federally pre-empted areas of immigration, patent, social security disability and tax, out-of-state lawyers may be authorized to practice in Florida before a federal agency rather than a Florida state court. This amendment would make clear that Florida's rules would apply to a lawyer authorized in another jurisdiction who practices law in Florida when otherwise authorized to practice.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on November 20, 2014.
- Program Evaluation Committee approved on strategic basis by a vote of 13-0 on December 11, 2014.
- Budget Committee approved fiscal impact by a vote of 6-0 on January 2, 2014.

Board Action: Board of Governors approved on voice vote without objection on January 30, 2015.

SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

Explanation: Within subdivision (c), deletes "substantial" before gift regarding soliciting gifts from clients and drafting instruments giving gifts. Within the comment, adds commentary regarding preparing documents that appoint the lawyer or the lawyer's relative as a fiduciary, noting the potential personal conflict and information the lawyer should provide the client so the client may make an informed decision.

Reasons: The proposed changes to the text and comments to Rule 4-1.8 address two important issues in the area of estate planning: (a) the issue of client gifts to lawyers, and (b) the issue of lawyers preparing wills and trusts which name the lawyer or person related to the lawyer as a personal representative or trustee. The Real Property Probate and Trust Law Section has proposed that the word substantial be removed from Rule 4-1.8(c) as it relates to solicitation of client gifts and the preparation of an instrument leaving a gift to a lawyer. The word "substantial" creates ambiguity and unnecessary litigation. For example, is a client's \$10,000 engagement ring in a \$1,000,000 estate substantial. It is inappropriate for a lawyer to solicit a gift from a client regardless of size. Further, because of the appearance of impropriety and difficulties of proof, the lawyer should not prepare a document leaving a gift to themselves or their family members, unless the lawyer is related to the client. The Real Property Probate and Trust Law Section also believes that the comments to Rule 4-1.8 should be amended to treat the lawyer's preparation of a document for a client which names the lawyer as a fiduciary as a Rule 4-1.7 current conflict which requires the client's informed consent, confirmed in writing. The current comments to Rule 4-1.8 leave it to the lawyer to decide whether written disclosure is required providing that "such appointments will be subject to the general conflict of interest provision in rule 4-1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary." The failure to adequately document the discussion with the client concerning the selection of a fiduciary creates, at a minimum, the appearance of impropriety. See *Rand v. Giller*, 489 So. 2d 796 (Fla. 3d DCA 1986), in which that court grappled with the difficulties involved when a lawyer fails to confirm the nature of the discussion concerning the selection of a fiduciary in writing noting "we strongly suggest that attorneys establish procedures for such cases which allow for evidence, other than the self-serving testimony of the attorney involved, of the care taken to avoid the appearance of impropriety." The proposed revision to the comment mandates minimum written disclosure to the client concerning who

is eligible to serve, the fact the fiduciary will be entitled to compensations, and that the fiduciary fees would be in addition to lawyer's fees. The proposed rule changes dovetail with a new statute passed in 2013 relating to client gifts. See Florida Statutes 732.806 (2013). A copy of the bill, the section's legislative position and the section's white paper on fiduciary appointments are attached in Appendix D.

Source: Real Property Probate and Trust Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 6-0 on substantive and procedural basis on December 8, 2015.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 15, 2015.
- Program Evaluation Committee approved 10-0 on strategic basis on January 28, 2016.

Board Action: Board of Governors approval on voice vote without objection on May 20, 2016.

SUBCHAPTER 4-5 LAW FIRMS AND ASSOCIATIONS

RULE 4-5.8 PROCEDURES FOR LAWYERS LEAVING LAW FIRMS AND DISSOLUTION OF LAW FIRMS

Explanation: Within the comment, clarifies rule by addressing issues such as when the negotiations and notification of clients should occur, which clients must be notified, obligations to clients who neither the departing lawyer nor the firm intends to represent, the method by which contact may occur, and obligations to provide contact information to the clients. Non-substantive edits conform the rule and comment to this Court's Guidelines for Rules Submissions.

Reasons: Staff requested that the Rules Committee review Rule 4-5.8 for possible amendments. Staff receives questions on the Ethics Hotline regarding common topics that are not addressed by the existing rule. For example, what should firms do when a departing lawyer does not want to take clients, e.g., when the departing lawyer is taking a position with a governmental entity? What should firms do about notifying clients when a lawyer is terminated for cause? Who are considered clients for purposes of this rule? What should the firm do about notifying clients whose files are closed? When does the notification have to occur? How long do they have to engage in bona fide communications? Can the contact occur by telephone? What if neither the firm nor the departing lawyer wants the clients? Can/how do the departing lawyers obtain the contact information for clients? What if the firm won't give the departing lawyer contact information for clients?

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 22, 2014.
- Budget Committee approved fiscal impact 6-0 on September 17, 2014.
- Program Evaluation Committee approved 10-0 on strategic basis on October 23, 2014.

Board Action: Board of Governors approved by voice vote on December 12, 2014.

RULE 4-5.8 PROCEDURES FOR LAWYERS LEAVING LAW FIRMS AND DISSOLUTION OF LAW FIRMS

Explanation: Within the comment, changes the name of law office management assistance service to practice resource institute.

Reasons: The Law Office Management Assistance Service has been totally restructured as a result of a program evaluation and recommendations by the Program Evaluation Committee and Board of Governors. The program and Florida bar department are now called "The Florida Bar Practice Resource Institute." The Special Committee on Technology/Office Tools & Resources was tasked with restructuring and overhauling the Law Office Management Assistance Service program which included a mandate to come up with a new name and retire the Law Office Management Assistance Service name. Survey results demonstrated that the Law Office Management Assistance Service name and perception of the Law Office Management Assistance Service program had become tired, dated, and negative, or that the vast majority of the bar membership had no knowledge of the program because it really was not memorable, marketable, or brand-able. The new role of Practice Resource Institute does not include onsite reviews/consultations of law offices. It functions as a law practice/office management and law office technology help desk and resource center using practice management advisors to provide assistance and recommendations via phone, e-mail, video conference, a self-help knowledge base, and live chat. The Practice Resource Institute practice management advisors are not involved with discipline or diversion consultations, and they do not give any legal or ethics advice.

Source: Special Committee on Technology/Office Tools & Resources

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee approved 11-0 on a substantive and strategic basis on January 29, 2015.

- Rules Committee approved 5-0 on a procedural basis on February 11, 2015.
- Budget Committee approved fiscal impact 5-0 on February 23, 2015.

Board Action: Board of Governors approved on consent calendar on voice vote without objection on March 27, 2015.

SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS

Explanation: Within subdivision (a)(4), omits the terms "specialist" and "expert" as terms prohibited unless the lawyer is board certified. Adds new subdivision (a)(5) and commentary adding that lawyers may use of terms "specialist" and "expert" if their training and experience are reasonably similar to the requirements for certification in Florida but requiring a disclaimer that the lawyer is not certified under certain circumstances.

Reasons: The U.S. District Court for the Northern District of Florida (Judge Robert L. Hinkle) issued an order on September 30, 2015 in *Searcy v. Florida Bar* (Case number 4:13cv664-RH/CAS), in which the Searcy law firm sued the bar regarding 2 lawyer advertising issues: 1) the prohibition against advertising past results unless they are objectively verifiable; and 2) the prohibition against claiming specialization or expertise unless the lawyer is board certified.

That court upheld the prohibition against advertising past results unless they are objectively verifiable. However, that court enjoined the bar from enforcing the prohibition against claiming specialization or expertise unless the lawyer is board certified. Amendments address the federal court order. A proposal from the Board of Legal Specialization and Education written in response to the federal court order, but before the bar had studied the issue and drafted its own amendments is attached in Appendix D. Comments of 2 Florida bar members in opposition are attached in Appendix D.

Source: Board Review Committee on Professional Ethics

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 6-1 on substantive basis on March 10, 2016.
- Rules Committee approved 4-0 on a procedural basis, with a change to the comment to make the amendments to the comment consistent with amendments to the rule, on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on a strategic basis on May 19, 2016.

Board Action: Board of Governors approved with 1 objection and 1 amendment to the comment on May 20, 2016.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Explanation: Within subdivision (b)(2)(B), changes the requirement for the contrasting "advertisement" mark from each page or panel to each separate enclosure. Within subdivision (b)(3), adds communications at a prospective client's request to the written communications that need not comply with the technical requirements of the direct mail rule.

Reasons: Communications at a prospective client's request are exempt from the filing requirement found in Rule 4-7.20. Similarly, these communications should be exempt from the technical requirements such as the contrasting "advertisement" mark, first sentence "if you have already retained a lawyer for this matter. . ." and where the lawyer obtained the information prompting the communication. When a prospective client has already identified the lawyer and requested information, these technical requirements are unnecessary.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 5-0 on substantive basis on March 26, 2015.
- Rules Committee approved 6-0 on procedural basis on April 16, 2015.
- Budget Committee approved fiscal impact 6-0 on May 4, 2015.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 21, 2015.

Board Action: Board of Governors approved on consent calendar on May 22, 2015.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Explanation: Within subdivision (a), deletes telegraph and facsimile as forms of prohibited solicitation and adds communications that occur electronically that are real-time, face-to-face communications such as video conference, as prohibited solicitation.

Reasons: Telegraph and facsimile are forms of written communication that should be treated the same as other written communications directed at a specific recipient. Although somewhat more intrusive than other written communications, they lack the coercion and duress that can be found in face-to-face communications, and a written record is created from these communications. Conversely, real-time, face-to-face electronic communications such as video

conference are more similar to telephone and in person face-to-face communications.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 9-0 on substantive basis on October 15, 2015.
- Program Evaluation Committee approved 10-0 on strategic basis on December 3, 2015.
- Rules Committee approved 6-0 on procedural basis on December 8, 2015.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 15, 2015.

Board Action: Board of Governors approved on voice vote without objection on January 29, 2016.

CHAPTER 5 RULES REGULATING TRUST ACCOUNTS

SUBCHAPTER 5-1 GENERALLY

RULE 5-1.1 TRUST ACCOUNTS

Explanation: Amends subpart (g)(4) of Rule 5-1.1 to reflect the change in address of the Florida Bar Foundation. The newly proposed rule refers bar members to the bar's website for the current Florida Bar Foundation address.

Reasons: The Florida Bar Foundation has moved its offices from the location stated in the current rule so the rule must be amended. The proposed amendment should not require further amendments as it refers readers to the bar's website for the current address of the Foundation.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 6-0 on substantive basis on July 24, 2014.
- Program Evaluation Committee approved 12-0 on a strategic basis on March 26, 2015.
- Rules Committee approved 6-0 on procedural basis on April 16, 2015.
- Budget Committee approved fiscal impact 6-0 May 4, 2015.

Board Action: Board of Governors approved on consent calendar by voice vote on May 22, 2015.

RULE 5-1.1 TRUST ACCOUNTS

Explanation: Adds commentary to Rule 5-1.1 to include examples of situations where a lawyer must protect and acknowledge a third party's interest in

trust account funds. These examples come from opinions of this Court, cited in the comment.

Reasons: The amendment to the comment makes the rule clearer for Florida lawyers by providing guidance from case law.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 7-0 on substantive basis on January 28, 2016.
- Program Evaluation Committee approved 10-0 on strategic basis on January 28, 2016.
- Rules Committee approved 7-0 on substantive basis on February 2, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.

Board Action: Board of Governors approved on May 20, 2016.

RULE 5-1.1 TRUST ACCOUNTS

Explanation: Within subdivisions (a)(1), (a)(2), (g)(1) and (g)(5), amendments add federally insured credit unions to the list of approved institutions for lawyer trust accounts.

Reasons: Within subdivisions (a)(1), (a)(2), (g)(1) and (g)(5), the rule is amended to give lawyers and their clients additional safe options for holding client trust accounts. On December 11, 2014, the U.S. Senate passed a bill (known as the Credit Union Share Insurance Fund Parity Act) which provides the same level of insurance coverage for Interest on Lawyer Trust Accounts held at credit unions that the Federal Deposit Insurance Corporation provides for Interest on Lawyer Trust Accounts held at banks. The bill was signed into law by President Obama on December 18, 2014. Comments from bar members and from representatives of credit unions in support and comments in opposition from representatives of banks are attached in Appendix D.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedures Committee approved 8-0 on substantive basis on October 15, 2015.
- Program Evaluation Committee approved 10-0 on strategic basis on December 3, 2015.
- Rules Committee approved 6-0 on procedural basis on December 8, 2015.

- The bar's Chief Financial Officer determined de minimus fiscal impact on December 15, 2015.
- Disciplinary Procedures Committee approved changes to subdivision (a) by e-mail vote of 6-0 on January 12, 2016.

Board Action: Board of Governors approved on voice vote without objection with Governor Mathews recused on July 29, 2016.

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

Explanation: Within subdivision (c), changes references from lawyers who sign trust account checks to "signatories." Within subdivision (g)(1), changes a reference to rule 5-1.2(c)(5) to "this rule." Adds new subdivision (g)(2), "report of trust account violations or errors to staff counsel under this rule" as a ground for auditing a lawyer's trust account and renumbers other subdivisions accordingly.

Reasons: The amendments are for agreement of rules and internal consistency, in making subdivisions (c) and (g) of Rule 5-1.2 compatible with changes to Rule 5-1.2 in an earlier order in *In Re Amendments to Rules Regulating the Florida Bar (Biennial Report)*, 140 So.3d 541, (Fla. corr. op. May 29, 2014), effective June 1, 2014.

Source: Bar staff

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee approved 6-0 on substantive basis on January 28, 2016.
- The Program Evaluation Committee approved 9-0 on strategic basis on March 1, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.
- Rules Committee approved 5-0 on a procedural basis on March 22, 2016.

Board Action: Board of Governors approved on consent calendar on May 20, 2016.

CHAPTER 6 LEGALIZATION AND SPECIALIZATION AND EDUCATION PROGRAMS

SUBCHAPTER 6-3 FLORIDA CERTIFICATION PLAN

RULE 6-3.7 INACTIVE STATUS

Explanation: Creates an inactive certification status for judges, law professors, active duty military, professional neutrals (mediators, arbitrators and voluntary trial resolution judges), and for substantial or material hardship cases.

Reasons: The addition of this rule will allow an eligible member to apply for a temporary inactive status for board certification if the member transitions to an occupation (voluntarily or not) that disrupts the member's ability to practice law; the rule will also permit a temporary inactive status under conditions related to a medical or substantial hardship. Eligibility pertains to judges, law professors, active duty military, professional neutrals (mediators, arbitrators and voluntary trial resolution judges), and for hardship situations. A member can apply for reactivation of board certification when the member is no longer eligible for the inactive status, or may choose to relinquish board certification.

Source: Board of Legalization Specialization and Education

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee approved 14-0 on a substantive and strategic basis, but changing 30 days to 90 days in subdivisions (d)(2) and (e)(1), on October 15, 2015.
- Rules Committee approved 6-0 on procedural basis, but adding "inactive status" to describe board certified and a hyphen between the words "one" and "half" in subdivision (c)(4), on December 8, 2015.
- Budget Committee approved fiscal impact 6-0 on December 28, 2015

Board Action: Board of Governors approved on consent calendar on voice vote without objection on January 29, 2016.

SUBCHAPTER 6-31 STANDARDS FOR BOARD CERTIFICATION IN INTERNATIONAL LITIGATION AND ARBITRATION

RULE 6-31.1 GENERALLY

Explanation: Adopts new subchapter 6-31.1, establishing a new area of certification in international litigation and arbitration.

Reasons: Currently, the only international law certification program is in international law. For years, those who practice in the areas of international litigation and arbitration have been seeking to set up a program that is focused on these areas.

Source: International Law Certification Committee and the International Law Section/Board of Legalization Specialization and Education

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee approved 10-0 on substantive and strategic basis on January 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.
- Rules Committee approved 5-0 on procedural basis on March 22, 2016.

Board Action: Board of Governors approved on voice vote on May 20, 2016.

RULE 6-31.2 DEFINITIONS

Explanation: Adopts new subchapter 6-31.2, setting forth definitions for a new area of certification in international litigation and arbitration.

Reasons: Currently, the only international law certification program is in international law. For years, those who practice in the areas of international litigation and arbitration have been seeking to set up a program that is focused on these areas.

Source: International Law Certification Committee and the International Law Section/Board of Legalization Specialization and Education

Background Information – Member Commentary / Committee Action

- Program Evaluation Committee approved 10-0 on substantive and strategic basis on January 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.
- Rules Committee approved 5-0 on procedural basis on March 22, 2016.

Board Action: Board of Governors approved on voice vote on May 20, 2016.

RULE 6-31.3 MINIMUM STANDARDS

Explanation: Adopts new subchapter 6-31.3, setting forth minimum standards for a new area of certification in international litigation and arbitration.

Reasons: Currently, the only international law certification program is in international law. For years, those who practice in the areas of international litigation and arbitration have been seeking to set up a program that is focused on these areas.

Source: International Law Certification Committee and the International Law Section/Board of Legalization Specialization and Education

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee approved 10-0 on substantive and strategic basis on January 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.
- Rules Committee approved 5-0 on a procedural basis on March 22, 2016.

Board Action: Board of Governors approved on voice vote on May 20, 2016.

RULE 6-31.4 INTERNATIONAL LITIGATION AND ARBITRATION RECERTIFICATION

Explanation: New subchapter 6-31.4, setting forth recertification standards for a new area of certification in international litigation and arbitration.

Reasons: Currently, the only international law certification program is in international law. For years, those who practice in the areas of international litigation and arbitration have been seeking to set up a program that is focused on these areas.

Source: International Law Certification Committee and the International Law Section/Board of Legalization Specialization and Education

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee approved 10-0 on substantive and strategic basis on January 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on March 10, 2016.
- Rules Committee approved 5-0 on procedural basis on March 22, 2016.

Board Action: Board of Governors approved on voice vote on May 20, 2016.

CHAPTER 10 RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW
SUBCHAPTER 10-2 DEFINITIONS

RULE 10-2.1 GENERALLY

Explanation: Within subdivision (b) amends definition of paralegal to include lawyer authorized to engage in the practice of law in Florida; within subdivision (e) clarifies that bar counsel includes UPL staff counsel.

Reasons: The current definition of paralegal requires that that the individual work under the direction and supervision of a Florida bar member. In certain circumstances a lawyer licensed in another state or foreign country may engage in the practice of law in Florida. For example, an out-of-state lawyer may be certified to work as an Authorized House Counsel in Florida. Currently, a nonlawyer employee working for the Authorized House Counsel would not be able to use the title paralegal. The amendment would allow the use of the title as long as the other requirements are met. Other amendments are to conform to this Court's Guidelines for Rules Submissions and for clarification.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis by voice and e-mail vote on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 10-3 STANDING COMMITTEE

RULE 10-3.2 DUTIES OF THE STANDING COMMITTEE

Explanation: Adds new subsection (b)(7) authorizing the Standing Committee on Unlicensed Practice of Law to close cases with the acceptance of a cease and desist affidavit with restitution to the complainant.

Reasons: At times the local circuit committee will close a case with the acceptance of a cease and desist affidavit and the respondent will agree to pay restitution to the complainant. As there is a monetary aspect involved, it is beneficial for the Standing Committee on UPL to review the affidavit and determine whether the restitution should be accepted. This amendment gives the Standing Committee that authority.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 10-4 CIRCUIT COMMITTEES

RULE 10-4.1 GENERALLY

Explanation: Adds subdivisions (e)(2) and (5) authorizing an unlicensed practice of law circuit committee to close a case based on a letter of advice and to accept a cease and desist affidavit with restitution. The subsequent subdivisions are renumbered.

Reasons: Unlicensed practice of law circuit committees may close a case by giving the respondent a letter of advice. The letter informs the respondent of the law in the area and notes possible issues. The amendment clarifies that a case may be closed based on a letter of advice. Circuit committees may also close a case with the acceptance of a cease and desist affidavit where the respondent agrees to pay restitution to the complainant. The amendment clarifies this authority.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 10-5 COMPLAINT PROCESSING AND INITIAL INVESTIGATORY PROCEDURES

RULE 10-5.2 DISQUALIFICATION AS ATTORNEY FOR RESPONDENT DUE TO CONFLICT

Explanation: Clarifies rule regarding disqualification of attorney for respondent due to conflict.

Reasons: The rule as worded is cumbersome and difficult to follow. The Rules Committee requested that the Standing Committee on UPL consider

amending the rule. The amendment clarifies the rule in simpler language and conforms the rule to this Court's Guidelines for Rules Submissions.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 10-6 PROCEDURES FOR INVESTIGATION

RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

Explanation: Within subdivision (a), adds letter of advice to recommendations and disposition. Within subdivision (b), clarifies the rule regarding bar counsel disagreement with the actions of the circuit committee.

Reasons: Rule 10-4.1 is being clarified to allow for cases to be closed with a letter of advice. This is a companion rule discussing recommendations and disposition of complaints. As it is a companion rule, language regarding closing a case based on a letter of advice is being added. Bar counsel attends all circuit committee meetings. The current rule envisions that bar counsel will not be at the meetings. The procedure for bar counsel objecting to the actions of the circuit committee is therefore clarified to comport with current practice.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 10-9 ADVISORY OPINIONS
**RULE 10-9.1 PROCEDURES FOR ISSUANCE OF ADVISORY OPINIONS
ON THE UNLICENSED PRACTICE OF LAW**

Explanation: Within subdivision (b) clarifies procedure to request a formal advisory opinion; within subdivision (g) removes requirement that a copy of the proposed advisory opinion be sent by certified mail to the petitioner but keeps the requirement that a copy be furnished to the petitioner, allows the filing of a memoranda instead of a brief, allows the filing of comments without leave of court and allows interested parties to file a comments in favor of the proposed opinion; amends language to conform to this Court’s Guidelines for Rules Submissions.

Reasons: As currently worded, the rule is a bit confusing on what is required to request a formal advisory opinion. The amendment clarifies the procedure and conforms the rule to this Court’s Guidelines for Rules Submissions. As the proposed opinion is electronically filed with this Court, the amendment also removes the requirement that the petitioner be sent a copy by certified mail. Often, individuals who are not licensed to practice law will file comments with this Court. The amendment allows the comments to be filed in memorandum format rather than as a brief. The current rule requires that an interested party request leave of this Court before comments may be filed. As this Court routinely grants these requests, the requirement to seek leave of court is deleted. Currently, there is no procedure by which interested parties may file comments in favor of the proposed opinion, and the amendment would allow this.

Source: Standing Committee on Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis with minor editorial changes on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Re-write after this Court’s sua sponte order removing the word “voluntary” in *In Re: Amendments to Rule Regulating the Florida Bar 10-9.1*, 176 So.3d 1273, Case No. SC15-687 (October 15, 2015).
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.
- Rules Committee approved 6-0 on substantive and procedural basis on December 8, 2015

Board Action: Board of Governors approved on consent calendar without objection on January 29, 2016.

CHAPTER 12 EMERITUS ATTORNEYS PRO BONO PARTICIPATION PROGRAM

SUBCHAPTER 12-1 GENERALLY

RULE 12-1.1 PURPOSE

Explanation: Changes "attorney" to lawyer.

Reasons: The changes conform the rule to this Court's Guidelines for Rules Submissions and make this terminology consistent throughout chapter 12 and the Rules Regulating the Florida Bar.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.2 DEFINITIONS

Explanation: Within subdivision (a), adds inactive lawyers, retired judges, and current or former full-time law professors to the pool of potential emeritus lawyers; requires that emeritus lawyers not be currently engaged in the practice of law, except for authorized house counsel certified by this Court under chapter 17; adds the following definitions: "inactive" in subdivision (d), and "active practice of law" in subdivision (e); rule is re-organized.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice. The changes add inactive lawyers, retired judges and current or former full-time law professors to the pool of potential emeritus lawyers to provide pro bono legal services under the auspices of a legal aid program. A copy of the January 11, 2016 letter from the clerk of this Court to the bar requesting consideration of these amendments is attached in Appendix D. A copy of the March 15, 2016 letter extending the bar's time to respond is attached in Appendix D.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.3 ACTIVITIES

Explanation: In subdivision (a)(2), provides that emeritus lawyers may sign and file pleadings and removes the requirement that the supervising lawyer sign all documents filed with the court, but requires that the supervising lawyer's name and bar number be included on any pleading or paper filed or served by an emeritus lawyer. In subdivision (a)(3), increases the scope of activities that can be performed by emeritus lawyers to include participating in legal clinics sponsored by the lawyer's legal aid organization and giving advice and assistance to, and drafting legal documents for, persons whose legal issues are not in litigation; adds commentary describing emeritus lawyers' appointment, activities, and limitations.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.4 SUPERVISION AND LIMITATIONS

Explanation: Within subdivision (c), provides that emeritus lawyers may not receive compensation for the legal services they provide under the rule; which is moved from rule 12-1.2.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.5 CERTIFICATION

Explanation: In subdivision (b), removes the requirement that the certificate of discipline history from the jurisdiction where the emeritus lawyer is licensed to practice law certify that the emeritus lawyer has fulfilled the requirements of active bar membership.

Reasons: The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

Explanation: Amendments re-organize the rule, change "attorney" to lawyer, makes terminology consistent with other changes in this chapter, and conforms the rule to this Court's Guidelines for Rules Submissions.

Reasons: The changes conform the rule to this Court's Guidelines for Rules Submissions. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 12-1.7 DISCIPLINE

Explanation: Amendments change "attorney" to lawyer, make terminology throughout the chapter consistent, and conform to this Court's Guidelines for Rules Submissions.

Reasons: The changes conform the rule to this Court's Guidelines for Rules Submissions. The changes addressing emeritus lawyers are discussed more fully in the amendments to rule 12-1.2.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on substantive and procedural basis on March 22, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on May 12, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

CHAPTER 15 REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS
SUBCHAPTER 15-2 STANDING COMMITTEE ON ADVERTISING
RULE 15-2.1 MEMBERSHIP AND TERMS

Explanation: Changes composition of the Standing Committee on Advertising from 4 lawyers and 3 nonlawyers to a number at the discretion of the Board of Governors, but no more than 20 members, including 3-5 nonlawyers.

Reasons: The current composition of the committee of 7 members leaves important decision-making to a very few members. With a quorum of 4 and the chair not voting under Roberts Rules except to break a tie, some decisions are made by 2 committee members.

Source: Board Review Committee on Professional Ethics

Background Information – Member Commentary / Committee Action:

- Board Review Committee on Professional Ethics approved 5-0 on substantive basis on March 26, 2015.
- Rules Committee approved 6-0 on procedural basis on April 16, 2015.
- Budget Committee approved fiscal impact 6-0 on May 4, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on May 21, 2015.

Board Action: Board of Governors approved on consent calendar on May 22, 2015.

CHAPTER 16 FOREIGN LEGAL CONSULTANCY RULE CHAPTER
SUBCHAPTER 16-1
RULE 16-1.2 DEFINITIONS

Explanation: Amends eligibility requirements to become a foreign legal consultant.

Reasons: The rule as currently worded requires that the applicant for foreign legal consultancy status have practiced law for 5 of the 7 years immediately preceding the application. The amendment changes this requirement to 3 of the 5 years immediately preceding the application. This amount of experience is sufficient to provide evidence of the applicant's ability so as to protect the public. As the number of years of experience is reduced, it is necessary to reduce the number of years that the applicant has a clear disciplinary history. This requirement is reduced from 10 years to 7 years and will continue to provide public protection and information necessary to evaluate the applicant's qualifications. For the same reasons, the requirement that the applicant had not been denied admission to the practice of law is changed from 15 years to 10 years.

The requirement that the applicant be over 26 years of age does not afford greater public protection and is no longer necessary.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

RULE 16-1.3 ACTIVITIES

Explanation: Clarifies foreign legal consultant title and information about jurisdictional limitations required to be used by foreign legal consultants; removes certain disclosure requirements not relating to status.

Reasons: A lawyer certified as a foreign legal consultant is not a Florida bar member and may not hold out as being a Florida bar member. The amendment clarifies what information the foreign legal consultant may not include and must include when holding out the public as a foreign legal consultant. The amendments also remove the requirement that the foreign legal consultant disclose to clients whether the lawyer has any malpractice insurance, the fact that any aggrieved client will not have access to the bar's Clients' Security Fund and the list of activities the lawyer is prohibited from performing as this disclose is not required by Florida bar members, and there is no evidence that the disclosures provided any protection to the client.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

RULE 16-1.4 CERTIFICATION-

Explanation: Reorganizes rule and changes required documentation attached to the foreign legal consultant application. Sworn statement deleted from this rule and moved to new rule 16-1.7.

Reasons: Currently, the rule requires that the applicant provide 2 letters of recommendation from lawyers admitted in the home jurisdiction and 2 letters of recommendation from Florida bar members. These letters may slow down the application process. These requirements are not included in the ABA Model Rule on Foreign Legal Consultants and do not provide any protection to the public or information that would assist this Court in determining whether to certify the lawyer as a foreign legal consultant. For these reasons, the requirement of the letters of recommendation is removed.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

RULE 16-1.5 WITHDRAWAL OR TERMINATION OF CERTIFICATION

Explanation: Changes conform rule to this Court's Guidelines for Rules Submissions.

Reasons: The amendments are necessary to conform the rule to this Court's Guidelines for Rules Submissions. No substantive changes are made.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

RULE 16-1.6 DISCIPLINE

Explanation: Within subdivision (c), removes unnecessary language regarding Florida bar notification to other jurisdictions.

Reasons: The current rule has language authorizing the bar to provide information regarding disciplinary action to the lawyer's home jurisdiction. As the Rules of Discipline already allow the bar to provide this information, the language is deleted as unnecessary.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

RULE 16-1.7 ANNUAL SWORN STATEMENT

Explanation: Creates new rule 16-1.7, moving requirement of an annual sworn statement of continued eligibility from current rule 16-1.4(b).

Reasons: A lawyer certified as a foreign legal consultant must pay the annual renewal fee equal to that paid by active Florida bar members and must provide a statement with the renewal fee that the lawyer is still eligible for foreign legal consultancy status. These requirements are currently in the rule regarding certification. That rule has been renamed "application" as it deals with the application process. As the annual renewal is not part of the application process, the requirements are moved to this new rule.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

Board Action: Board of Governors approved on consent calendar on September 30, 2016.

CHAPTER 17 AUTHORIZED HOUSE COUNSEL RULE
SUBCHAPTER 17-1 GENERALLY
RULE 17-1.2 DEFINITIONS

Explanation: Adds authority to allow individuals authorized to practice law in a foreign country to be certified by this Court to act as Authorized House Counsel when working for a business organization located in Florida.

Reasons: The delivery of legal services is changing rapidly as a result of globalization and technology. There is already a significant level of cross-border legal services. The number of foreign companies with U.S. offices or operations in the United States has grown substantially over the past decade. Those companies sometimes require their in-house counsel to relocate or transfer to Florida for a period of time. In order to react sensibly to the realities of globalization and cross-border practice, but to also maintain protection of the public, the Florida's Authorized House Counsel Rule is amended to permit foreign lawyers limited practice authority to act as authorized house counsel in Florida. The amendments require that the foreign lawyer be certified by this Court, abide by the limitations placed on them as foreign lawyers practicing in Florida, pay annual bar fees and submit to the disciplinary authority of this Court and the bar. Twenty states currently permit foreign in-house counsel and, in February 2016, the ABA House of Delegates adopted a resolution expanding the authorization for the certification of foreign in-house counsel.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis with minor language changes on March 22, 2016.
- Budget Committee approved fiscal impact 8-0 on May 19, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016.

Board Action: Board of Governors approved on voice vote with 1 objection on July 29, 2016.

RULE 17-1.3 ACTIVITIES

Explanation: Deletes example of language that may be used in disclosure of status as an Authorized Counsel.

Reasons: The amendment to rule 17-1.2 allows individuals authorized to practice law in a foreign jurisdiction to be certified as an Authorized House

Counsel in Florida. As there are several ways this authorization is granted, the example language of the disclosure is no longer accurate. The rule retains the prohibition on holding out as a Florida bar member.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis with minor editorial changes on March 22, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Budget Committee approved fiscal impact 8-0 on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016.

Board Action: Board of Governors approved on voice vote with 1 objection on July 29, 2016.

RULE 17-1.4 REGISTRATION

Explanation: Amends application requirements to allow certification of lawyers authorized to practice law in a foreign country.

Reasons: The amendments to rule 17-1.2 allow individuals authorized to practice law in a foreign county to become certified as an authorized house counsel to provide legal services to a business organization located in Florida. This authorization requires changes to the application process to ensure that the proper documentation is provided.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis with minor editorial changes on March 22, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Budget Committee approved fiscal impact 8-0 on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016.

Board Action: Board of Governors approved on voice vote with 1 objection on July 29, 2016.

RULE 17-1.5 TERMINATION OR WITHDRAWAL OF REGISTRATION

Explanation: Adds action taken by a foreign jurisdiction regarding an authorized house counsel's authorization to practice law as a basis for termination of the authorized house counsel certification.

Reasons: The amendment to rule 17-1.2 allows individuals authorized to practice law in a foreign jurisdiction to be certified as an Authorized House Counsel in Florida. As there are different methods by which a lawyer can be authorized to practice law in a foreign jurisdiction, the amendment allows for termination of the authorized house counsel certification if the foreign jurisdiction takes action regarding the lawyer's authorization to practice law.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis with minor editorial changes on March 22, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Budget Committee approved fiscal impact 8-0 on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 17-1.5 TERMINATION OR WITHDRAWAL OF REGISTRATION

Explanation: Adds new subdivision (e), to allow for the recertification of authorized house counsel whose status was terminated for failure to pay annual fees or complete continuing legal education or basic skills course requirements in the same manner as delinquent members of the bar are reinstated.

Reasons: Authorized house counsel are currently treated as members of the bar for disciplinary purposes, and like members, are required to pay annual fees and complete continuing legal education and basic skills course requirements. However, if an authorized house counsel fails to pay annual fees or fails to complete their continuing legal education or basic skills course requirements, they are not treated as members of the bar for purposes of clearing up that delinquency. In these circumstances, an authorized house counsel's status is terminated and they are no longer authorized to provide legal services to their business organization. To continue working for the business organization, an authorized house counsel has to reapply and pay another application fee, which is currently \$1600. The proposed amendment would allow for the recertification of authorized house

counsels in the same manner that delinquent members are reinstated, namely, by petitioning for removal of the fees, continuing legal education, or basic skills course requirements delinquency, paying a \$150 administrative fee, and paying their annual fees or completing their continuing legal education or basic skills course requirements. This will allow the authorized house counsel to become recertified and remain under this Court's jurisdiction.

Source: Unlicensed Practice of Law Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 7-0 on a substantive and procedural basis on May 26, 2016.
- Budget Committee approved fiscal impact 6-0 on July 28, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.

Board Action: Board of Governors approved on voice vote without objection on September 30, 2016.

RULE 17-1.6 DISCIPLINE

Explanation: Amendments change "registration" to "certification" and conform rule to this Court's Guidelines for Rules Submissions.

Reasons: Amendments conform the terminology used in this rule to the terminology change made in other rules in this chapter.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 4-0 on a substantive and procedural basis with minor editorial changes on March 22, 2016.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Budget Committee approved fiscal impact 8-0 on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016.

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

RULE 17-1.7 IMMUNITY FROM PROSECUTION

Explanation: Deletes the rule in its entirety.

Reasons: The Authorized House Counsel rule became effective in 1994. The immunity language for lawyers licensed in another United States jurisdiction for activities prior to the effective date of the rule is no longer needed. The

proposed amendment to rule 17-1.2 allows individuals authorized to practice law in a foreign jurisdiction to be certified as an Authorized House Counsel in Florida. The bar requests in this petition, if adopted, that this Court give immunity to foreign authorized house counsel for a specified time period in its order approving the amendments. Having the immunity in the order to the petition rather than a separate rule will prevent the bar having to change a rule when the immunity period ceases and the rule becomes obsolete.

Source: International Law Section

Background Information – Member Commentary / Committee Action:

- Rules Committee voted 4-0 not to approve the amendments proposed by the International Law Section Executive Council and instead voted 4-0 to delete the rule in its entirety, since the rule would be of limited duration in time, because at some point the program would be well known and the bar would no longer grant immunity and instead directed staff to ask this Court in its order to direct the bar to grant immunity for a limited duration in time to promote foreign authorized house counsel applications.
- Program Evaluation Committee approved 12-0 on strategic basis on May 19, 2016.
- Budget Committee approved 8-0 on May 19, 2016.
- Standing Committee on the Unlicensed Practice of Law voted 10-0 that the committee did not have any objections to the amendments and supported the amendments in concept on June 17, 2016

Board Action: Board of Governors approved on voice vote without objection on July 29, 2016.

CHAPTER 20 FLORIDA REGISTERED PARALEGAL PROGRAM

SUBCHAPTER 20-1 PREAMBLE

RULE 20-1.1 PURPOSE

Explanation: Changes "member of The Florida Bar" to "employing or supervising lawyer."

Reasons: Amendments change references to "member of The Florida Bar" to be consistent with new definition of "employing or supervising lawyer" in rule 20-2.1(e) as lawyers other than Florida bar members are authorized to provide legal services in Florida under certain limited circumstances.

Source: Florida Registered Paralegal Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and procedural basis on August 13, 2015.

- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015.

SUBCHAPTER 20-2 DEFINITIONS

RULE 20-2.1 GENERALLY

Explanation: Within subdivisions (a), (c), and (e), changes Florida bar members to employing or supervising lawyers and expands the definition of employing or supervising lawyer to include not only Florida bar members, but also authorized house counsel, foreign legal consultants and military lawyers.

Reasons: By expanding the definition of employing or supervising lawyers to include other lawyers who are not Florida bar members but that are regulated by the bar, this definition allows them to be able to attest to the work experience of their paralegals who are interested in becoming Florida Registered Paralegals.

Source: Florida Registered Paralegal Standing Committee

Background Information – Member Commentary / Committee Action:

- Rules Committee approved 5-0 on substantive and a procedural basis on August 13, 2015.
- Program Evaluation Committee approved 14-0 on strategic basis on October 15, 2015.
- Budget Committee approved fiscal impact 5-0 on October 26, 2015.

Board Action: Board of Governors approved on consent calendar on December 4, 2015

Official Notice of Amendments

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file, which included all the proposals in all 3 biennial petitions that are being filed simultaneously, was published in the September 1, 2016 issue of the bar *News*. A copy of that published notice 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/8E415C29C5A99DA285258014005E48F5>

Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted a discrepancy between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating the Florida Bar as published in Thomson Reuters' *Florida Rules of Court*. The bar has notified the publisher of the error below:

Thomson Reuters 2016 *Florida Rules of Court* in subdivision (c) of rule 10-9.1, does not italicize the case name, "Harold Goldberg v. Merrill Lynch Credit Corporation," which should be italicized per this Court's order in *In re Amendments to Rule Regulating The Florida Bar 10-9.1.*, 176 So. 3d 1273 (Fla. 2015), in which this Court made other amendments to subdivision (c), but properly showed the case name in italics, although the case name was not originally in italics when adopted in that section of subdivision (c) in *In re Amendments To Rules Regulating The Florida Bar-10-9.1*, 82 So. 3d 66, 68 (Fla. 2012).

Editorial Corrections and Request for Waiver of Rules Procedures

During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors and most were not correct in the official bar *News* notice, 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. The following are the editorial corrections:

- Within subdivisions (d), (g) and (h) of rule 1-12.1, the word "News" was not italicized in the order in which this Court originally adopted these subdivisions, but should be to denote the name of the bar publication. *See The Florida Bar Re: Amendments to Rules Regulating the Florida Bar*, 587 So. 2d 1121, 1124 (Fla. 1991).
- In subdivision (a) of rule 3-7.5, as originally approved and noticed, there was no hyphen in the word "email" which was corrected in this petition to use a hyphen to read "e-mail" as a staff editorial correction for consistency with other Rules Regulating the Florida Bar.

- In subdivision (g) of rule 3-7.5 as originally approved and noticed, the change from “shall be” to “is” is grammatically incorrect, and is noted in Appendices A and B as “are” to be grammatically correct as a staff editorial correction.
- In subdivision (j) of rule 4-1.8, as originally requested by the bar and adopted by this Court, the certificate contained a comma where an end parenthesis should have been used. *See Amendments to Rules Regulating the Florida Bar*, 820 So. 2d 210 (Fla. 2002). The correction from a comma to an end parenthesis is a staff editorial correction.
- Within the first paragraph of the commentary to rule 4-5.8, there is a space between the “So.” and “2d” in the citations for the *Donahue* and *Dowda* cases that is not appropriate blue book format.
- Within the comment to rule 4-7.14, as originally requested by the bar and adopted by this Court, the headers all have initial capital letters. *See, In re Amendments to Rules Regulating the Florida Bar-- Subchapter 4-7, Lawyer Advertising Rules*, 108 So. 3d 609 (Fla. 2013). Comment headers should contain capitals only in the initial word, per this Court’s Guidelines for Rules Submissions.
- Within the 7th paragraph of the comment to rule 5-1.1, there were originally spaces between “So.” and “2d” in the added commentary as originally approved by the Board of Governors and noticed in the bar *News* that are incorrect blue book format.
- Within subdivision (a)(1)(B) of rule 12-1.2, within the proposed addition “is an inactive or retired member of the bar. . .,” the word “inactive” was mistakenly published to the board and in the *News* notice as “active” although amendments as approved by the Unlicensed Practice of Law Standing Committee and the Rules Committee and the description of the amendment and all other references to the term within the proposed amendments to the rule clearly were intended that lawyers be “inactive” to be eligible to be emeritus lawyers.
- Within subdivision (b) of rule 17-1.3, staff made an editorial correction to add “s” to the word “individual” for parallel construction

which appears to have been inadvertently stricken in *In re Amendments to Rules Regulating the Florida Bar (Biennial Report)*, 140 So. 3d 541 (Fla. 2014).

Additionally, the Board of Governors waived notice of final action and second reading on the amendments to rules 16-1.2, 16-1.3, 16-1.4, 16-1.5, 16-1.6, and 16-1.7. The requirement of second reading and notice of final Board of Governors action are required by Standing Board Policy 1.60(d), but not by rule 1-12.1. The amendments were noticed for first reading in the bar *News* on July 1, 2016 and were noticed for filing with this Court on September 1, 2016.

Finally, in only the bar *News* notice, the chapter and subchapter numbers titles to chapter 20 and subchapter 20-1 were shown as deleted text, which was an error that the bar *News* software program added. As approved by the Board of Governors, the chapter and subchapter numbers and titles were not deleted and they are not intended to be deleted. They are shown correctly in Appendix A and B.

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

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

Other Pending Amendments

There are currently 2 pending petitions involving amendments to Rules Regulating the Florida Bar filed by the bar:

- *In re Amendments to Rules Regulating the Florida Bar Rule 4-1.19 and Florida Family Law Rule of Procedure 12.745 (Collaborative Law Process)*, Case No. SC16-1685, was filed September 16, 2016; and

- *In re: Amendments to the Rules Regulating the Florida Bar - Subchapter 4-7 (Lawyer Referral Services)*, Case No. SC16-1470, was filed August 15, 2016;

The proposed amendments within this filing are unrelated to these 2 different rules matters and may be considered independent of them.

Contents of Appendices

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).

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.

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

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

Comments in Response to Amendments

Comments of 2 bar members received in opposition to proposed amendments to rule 4-7.14 are attached in Appendix D. Comments of representatives of banks in opposition to amendments to rule 5-1.1 that would allow lawyers to have trust accounts in federally insured credit unions are attached in Appendix D. Comments from bar members and representatives of credit unions in support of the amendment to rule 5-1.1 that would allow lawyers to have trust accounts in federally insured credit unions are attached in Appendix D.

Oral Argument Not Requested

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.

Effective Date Request

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 and implement any changes approved by this Court.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition and, if amendments to chapter 17 relating to authorized house counsel are approved, giving immunity to foreign authorized house counsel for a specified time period in this Court's order approving the amendments.

Respectfully submitted,

/s/ John F. Harkness Jr.

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CERTIFICATE OF TYPE SIZE AND STYLE

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

/s/ John F. Harkness, Jr.

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 Thomson Reuter's *Florida Rules of Court*.

/s/ John F. Harkness, Jr.

John F. Harkness, Jr.
Executive Director
Florida Bar Number 12339