

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO THE RULES      CASE NO. SC16-1961  
REGULATING THE FLORIDA BAR –  
BIENNIAL PETITION

**THE FLORIDA BAR’S MOTION FOR LEAVE TO RESPOND AND  
RESPONSE TO COMMENTS REGARDING PROPOSED AMENDMENTS  
TO THE COMMENT TO RULE 5-1.1**

The Florida Bar (the bar) respectfully requests leave to respond to comments filed in this case and states as follows:

The bar filed its petition in this case on October 26, 2016.

Comments were filed by Thomas O. Wells on October 31, 2016 and by Timothy P. Chinaris on November 25, 2016. The bar requests leave to respond to the comments of Mr. Wells and Mr. Chinaris. This response addresses the comments in rule order.

Regarding Mr. Chinaris’ comments on rule 4-1.8(h), the bar’s intent in changing the language of the rule was to conform to this Court’s style guide found within the Guidelines for Rules Submissions in Administrative Order AOSC06-14, dated June 14, 2006. The bar did not intend to change the meaning of the rule. The bar therefore asks that this Court accept Mr. Chinaris’ proposal to strike the word “prospective” from the proposed addition to the second sentence of subdivision (h) of rule 4-1.8.

The comments filed by Mr. Wells request that this court include in the comment to rule 5-1.1 a very detailed exposition and legal advice interpreting case law on garnishment of lawyer trust accounts. It is not the purpose of the Rules Regulating The Florida Bar to give legal advice to bar members. The Rules Regulating The Florida Bar cannot be changed immediately in response to future changes in the law. The bar’s proposal points members to the leading case on this subject and provides a starting point for each lawyer’s own research into the

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applicability of the law to each individual set of facts. This is all that a comment to a bar rule should do. The bar's Disciplinary Procedure Committee considered almost identical comments from Mr. Wells at its meeting on January 8, 2016, and voted unanimously not to add Mr. Wells' proposed comment to rule 5-1.1 for the reasons stated above.

The bar has no objection to the citation corrections that Mr. Chinaris proposes or to the addition of clarifying language regarding the holdings of the cases cited. The bar would also have no objection to including the citations alone with no parenthetical explanation. The Disciplinary Procedure Committee did consider leaving out all case citations to the proposed comment to rule 5-1.1, as recommended by Mr. Chinaris. However, the Disciplinary Procedure Committee voted to include these citations at its January 8, 2016 meeting to give bar members a starting place for research on third party interests in trust account funds. Also, unlike Mr. Wells' proposal, the bar's proposed comment cites disciplinary decisions issued by this court, which is the ultimate authority in determining ethical and unethical conduct. Referring to this court's discipline decisions provides useful guidance to bar members in interpreting rule 5-1.1.

As noted in the petition, the proposed amendments are more than adequate in their present form. The comments do not provide any compelling basis to reject the proposed amendments or to make additional changes to the bar's proposal except as noted above. Therefore, the bar requests that this Court grant the bar's request for leave to respond to comments filed, accept this response, and adopt the amendments as proposed, with the corrections noted by Mr. Chinaris.

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.

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

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion has been sent by e-mail to Thomas O. Wells ([tom@twellslaw.com](mailto:tom@twellslaw.com)) and Timothy P. Chinaris ([tchinaris@gmail.com](mailto:tchinaris@gmail.com)) on this 13th day of December, 2016.

/s/ John F. Harkness, Jr.

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John F. Harkness, Jr.  
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