

RECEIVED, 10/26/2016 08:03:57 AM, Clerk, Supreme Court

# **APPENDIX B**

## **SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE**

**October 26, 2016**

## RULES REGULATING THE FLORIDA BAR

### CHAPTER 1 GENERAL

\* \* \*

### SUBCHAPTER 1-3 MEMBERSHIP

\* \* \*

#### RULE 1-3.2 MEMBERSHIP CLASSIFICATIONS

##### (a) Members in Good Standing.

(1) Members of The Florida Bar in good standing shall mean only those persons licensed to practice law in Florida who have paid annual membership fees or dues for the current year and who are not retired, resigned, delinquent, on the inactive list for incapacity, or suspended members.

(2) Members of The Florida Bar who have elected inactive status, who have paid annual membership fees for the current year, and who are not retired, resigned, delinquent, suspended or on the inactive list for incapacity, are considered to be in good standing only for purposes of obtaining a certificate of good standing and for no other purpose. A certificate of good standing issued to an inactive member will reflect the member's inactive status.

**(b) Conditionally Admitted Members.** The Supreme Court of Florida may admit a person with a prior history of drug, alcohol, or psychological problems to membership in The Florida Bar and impose conditions of probation as the court deems appropriate upon that member. The period of probation ~~shall~~will be no longer than 5 years, or for ~~such an~~ indefinite period of time as the court ~~may~~deems appropriate by conditions in its order. The conditions may include, but not be limited to, participation in a rehabilitation program, periodic blood and urine analysis, periodic psychological examinations, or supervision by another member of The Florida Bar. The probation ~~shall~~will be monitored by The Florida Bar and the costs ~~thereof shall be~~ paid by the member on probation. A failure to observe the conditions of probation or a finding of probable cause as to conduct of the member committed during the period of

An inactive member of The Florida Bar requested 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 being “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.

probation may terminate the probation and subject the member to all available disciplinary sanctions. Proceedings to determine compliance with conditions of admission ~~shall~~will be processed in the same manner as matters of contempt provided elsewhere in these Rules Regulating The Florida Bar. If necessary, the court may assign a judicial referee to take testimony, receive evidence, and make findings of fact in the manner prescribed in the rule concerning procedures before a referee. The findings of the referee may be appealed as provided in the rule for procedures before the supreme court.

**(c) Inactive Members.** Inactive members of The Florida Bar ~~shall~~means only those members who have properly elected to be classified as inactive in the manner elsewhere provided.

Inactive members ~~shall~~will:

- (1) pay annual membership fees as set forth in rule 1-7.3;
- (2) be exempt from continuing legal education requirements;
- (3) affirmatively represent their membership status as inactive members of The Florida Bar when any statement of Florida Bar membership is made;
- (4) not hold themselves out as being able to practice law in Florida or render advice on matters of Florida law unless certified as an emeritus lawyer under chapter 12 of these rules;
- (5) not hold any position that requires the person to be a licensed Florida ~~attorney~~lawyer;
- (6) not be eligible for certification under the Florida certification plan;
- (7) not vote in Florida Bar elections or be counted for purposes of apportionment of the board of governors;

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.

(8) certify upon election of inactive status that they will comply with all applicable restrictions and limitations imposed on inactive members of The Florida Bar, unless certified as an emeritus lawyer under chapter 12 of these rules.

Failure of an inactive member to comply with all these requirements ~~thereof shall be~~ cause for disciplinary action.

An inactive member may, at any time, apply for reinstatement to active membership in good standing to become eligible to practice law in Florida in the manner provided in rule 1-3.7.

\* \* \*

**SUBCHAPTER 1-7 MEMBERSHIP FEES AND FISCAL CONTROL**

\* \* \*

**RULE 1-7.5 RETIRED, INACTIVE, DELINQUENT MEMBERS**

A member who is retired, inactive, or delinquent ~~shall not practice~~ is prohibited from practicing law in this state until reinstated as provided in these rules, except retired or inactive members who are certified as emeritus lawyers under chapter 12 of these rules.

\* \* \*

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.

## SUBCHAPTER 1-12 AMENDMENTS

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

**(a) Authority to Amend.** The board of governors of The Florida Bar ~~shall~~ have the authority to amend chapters 7 and 9, as well as standards for the individual areas of certification within chapter 6 of these Rules Regulating The Florida Bar, consistent with the notice, publication, and comments requirements provided below. Only the Supreme Court of Florida ~~shall~~ have the authority to amend all other chapters of these Rules Regulating The Florida Bar.

**(b) Proposed Amendments.** [no change]

**(c) Board Review of Proposed Amendments.** The board of governors ~~shall~~ will review proposed amendments by referral of the proposal to an appropriate board committee ~~thereof~~ for substantive review. After substantive review, an appropriate committee of the board ~~shall~~ will review the proposal for consistency with these rules and the policies of The Florida Bar. After completion of review, a recommendation concerning the proposal ~~shall~~ will be made to the board.

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

**(e) Comments by Members.** Any member may request a copy of the proposed amendments and may file written comments concerning them. The comments ~~shall~~ must be filed with the executive director sufficiently in advance of the board meeting to allow for ~~copying and~~ distribution to the members of the board.

**(f) Approval of Amendments.** Amendments to other than chapters 7 and 9, as

well as the standards for the individual areas of certification within chapter 6 of these Rules Regulating The Florida Bar ~~shall~~must be by petition to the Supreme Court of Florida. Petitions to amend these Rules Regulating The Florida Bar may be filed by the board of governors or by 50 members in good standing, provided that any amendments proposed by members of the bar ~~shall~~must be filed 90 days after filing them with The Florida Bar.

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

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

**(i) Waiver.** On good cause shown, the court may waive any or all of the provisions of this rule.

\* \* \*

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. Bar members would still have notice via the bar *News* in a summary that will give adequate notice of the amendment's content with direction to go to the website for the full text.

## CHAPTER 3 RULES OF DISCIPLINE

\* \* \*

### SUBCHAPTER 3-2 DEFINITIONS

#### RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms shall have the meaning herein set forth below unless their use ~~thereof shall~~ clearly indicates a different meaning:

**(a) Bar Counsel.** ~~A~~ Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

**(b) The Board or the Board of Governors.** The board or the board of governors is the board of governors of The Florida Bar.

**(c) Complainant or Complaining Witness.** ~~Any~~ A complainant or complaining witness is any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

**(d) This Court or the Court.** ~~The~~ This court or the court is the Supreme Court of Florida.

**(e) Court of this State.** ~~A~~ Court of this state is a state court authorized and established by the constitution or laws of the state of Florida.

**(f) Diversion to Practice and Professionalism Enhancement Programs.** ~~The~~ Diversion to practice and professionalism enhancement programs is removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

**(g) Executive Committee.** ~~The~~ Executive committee is the executive committee



of the board of governors of The Florida Bar.

**(h) Executive Director.** ~~The~~Executive director is the executive director of The Florida Bar.

**(i) Inquiry.** Inquiry is a written communication received by bar counsel questioning the conduct of a member of The Florida Bar.

**(j) Practice and Professionalism Enhancement Programs.** ~~Programs~~Practice and professionalism enhancement programs are programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

**(j) Probable Cause.** A Probable cause is a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

**(k) Referral to Practice and Professionalism Enhancement Programs.** ~~Placement~~Referral to practice and professionalism enhancement programs is placement of a lawyer in skills enhancement programs as a disciplinary sanction.

**(m) Referee.** ~~A~~Referee is a judge or retired judge appointed to conduct proceedings as provided under these rules.

**(n) Respondent.** ~~A~~Respondent is a member of The Florida Bar or an ~~attorney~~lawyer subject to these rules who is accused of misconduct or whose conduct is under investigation.

**(o) Staff Counsel.** ~~A~~Staff counsel is a lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

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.

**(øp) Chief Branch Discipline Counsel.** [no change]

**(pø) Designated Reviewer.** [no change]

**(qr) Final Adjudication.** A Final adjudication is a decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

\* \* \*

## SUBCHAPTER 3-7 PROCEDURES

\* \* \*

### RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

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

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

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

(3) *Nature of Disciplinary Review Committee and Board of Governors Review.* The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any ~~such~~review on referral from a designated reviewer is ~~in the nature of~~consultation on pending litigation

and therefore is not subject to intervention by persons outside the relationship between the bar and its counsel.

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

(5) *Authority of Designated Reviewer to Make Recommendations.* [no change]

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

Recommendations of the disciplinary review committee may include:

- (1) referral of the matter to the grievance mediation program;
- (2) referral of the matter to the fee arbitration program;
- (3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6) a finding of minor misconduct; or
- (7) a finding of probable cause that further disciplinary proceedings are

warranted.

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

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

**(e) Finding of No Probable Cause.** A finding of no probable cause by the board ~~shall be~~is final and no further proceedings ~~shall be had~~may be conducted in the matter by The Florida Bar unless a reason arises at a later time to re-open the file.

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

**(g) Filing Service on Board of Governors.** All matters to be filed with or served ~~upon~~ the board ~~shall~~must be addressed to the board of governors and filed with the executive director.

**(h) Custodian of Bar Records.** The executive director or his designees ~~shall be~~are the custodians of the official records of The Florida Bar.

\* \* \*

The rule is amended to clarify the meaning of a “no probable cause” finding by the Board of Governors.

As originally approved by the Board of Governors and noticed in the bar *News*, “shall be” was to be replaced with “is” but in a staff editorial correction is noted here as “are” to be grammatically correct.

**RULE 3-7.16 LIMITATION ON TIME TO BRING COMPLAINT OPEN INVESTIGATION**

**(a) Time for Inquiries, Initiating Investigation of Complaints, and Re-opened Cases.** Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced

(1) Initial Complaint or Investigation. A complainant must make a written inquiry to The Florida Bar within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered. The Florida Bar must open an investigation initiated by The Florida Bar within 6 years from the time the matter giving rise to the investigation is discovered or, with due diligence, should have been discovered. ~~A re-opened disciplinary investigation shall not be barred by this rule if the investigation is re-opened within 1 year of the date on which the matter was closed, except that re-opened investigations based on deferrals made in accord with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar shall not be barred if re-opened within 1 year of the conclusion of the civil, criminal, or other proceedings on which deferral was based.~~

(2) Re-opened Investigations. A re-opened disciplinary investigation is not time barred by this rule if the investigation is re-opened within 1 year after the date on which the matter was closed, except that a re-opened investigation based on a deferral made in accordance with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar is not barred if re-opened within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which the deferral was based.

(3) Deferred Investigations. A disciplinary investigation which began with the opening of a discipline file and bar inquiries to a respondent within the 6-year time period as described in this rule and was then deferred in accordance with bar policy and the Rules Regulating The Florida Bar, is not time barred under this rule if a grievance committee finds probable cause and the bar files its formal

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).

complaint within 1 year after actual notice of the conclusion of the civil, criminal, or other proceedings on which deferral was based.

**(b) Exception for Theft or Conviction of a Felony Criminal Offense.** There ~~shall be~~ no limit on the time in which to present, reopen, or bring a matter alleging theft or conviction of a felony criminal offense by a member of The Florida Bar.

**(c) Tolling Based on Fraud, Concealment, or Misrepresentation.** ~~In matters covered by this rule where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint, the limitation of time in which to bring or reopen an inquiry or complaint within this rule shall be~~ tolled where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint.

**(d) Constitutional Officers.** Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar ~~shall~~ must be commenced within 6 years after the constitutional officer vacates office.

\* \* \*

## **CHAPTER 4 RULES OF PROFESSIONAL CONDUCT**

### **PREAMBLE - A LAWYER'S RESPONSIBILITIES**

[no change]

#### **Scope:**

[no change]

#### **Terminology:**

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See "informed consent" below. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time.

"Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in the legal department of a corporation or other organization.

"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.



"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Lawyer" denotes a person who is a member of The Florida Bar or otherwise authorized to practice in ~~any court~~ of the State of Florida.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

"Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a

The current rule does not address the lawyers who are not members of The Florida Bar, 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.

legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

"Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**COMMENT**

[no change]

\* \* \*

**SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP**

\* \* \*

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

**(a) Business Transactions With or Acquiring Interest Adverse to Client.** A lawyer ~~shall not~~ is prohibited from entering into a business transaction with a client or knowingly ~~acquire~~ acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses, unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

**(b) Using Information to Disadvantage of Client.** A lawyer ~~shall not use~~ is prohibited from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

**(c) Gifts to Lawyer or Lawyer's Family.** A lawyer ~~shall not~~ is prohibited from ~~soliciting any substantial gift~~ soliciting any from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any ~~substantial gift~~ substantia unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild,

The proposed changes address an important issue in the area of estate planning: the issue of client gifts to lawyers. The Real Property Probate and Trust Law Section has

parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

**(d) Acquiring Literary or Media Rights.** Prior to the conclusion of representation of a client, a lawyer ~~shall not make or negotiate~~ is prohibited from making or negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**(e) Financial Assistance to Client.** A lawyer ~~shall not provide~~ is prohibited from providing financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

**(f) Compensation by Third Party.** A lawyer ~~shall not accept~~ is prohibited from accepting compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by rule 4-1.6.

**(g) Settlement of Claims for Multiple Clients.** A lawyer who represents 2 or more clients ~~shall not participate~~ is prohibited from participating in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives

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.

informed consent, in a writing signed by the client. The lawyer's disclosure ~~shall~~must include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

**(h) Limiting Liability for Malpractice.** A lawyer ~~shall not make~~is prohibited from making an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer ~~shall not settle~~is prohibited from settling a claim for ~~such~~liability for prospective malpractice with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in ~~connection therewith~~making the agreement.

**(i) Acquiring Proprietary Interest in Cause of Action.** A lawyer ~~shall not acquire~~is prohibited from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee.

**(j) Representation of Insureds.** When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights ~~shall~~must be provided to the insured at the commencement of the representation. The lawyer ~~shall~~must sign the statement certifying the date on which the statement was provided to the insured. The lawyer ~~shall~~must keep a copy of the signed statement in the client's file and ~~shall~~must retain a copy of the signed statement for 6 years after the representation is completed. The statement ~~shall~~must be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights ~~shall be deemed to augment~~or detracts from

any substantive or ethical duty of a lawyer or affect the extradisciplinary consequences of violating an existing substantive legal or ethical duty; nor ~~shall~~does any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

## STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. *Your Lawyer.* [no change]

2. *Fees and Costs.* [no change]

3. *Directing the Lawyer.* If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under ~~such~~these policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4. *Litigation Guidelines.* Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes those guidelines affect the range of actions the lawyer can take and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. ~~Upon~~On request, the lawyer or the insurance company should either explain the guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action

the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

- 5. *Confidentiality.* [no change]
- 6. *Conflicts of Interest.* [no change]
- 7. *Settlement.* [no change]
- 8. *Your Risk.* [no change]
- 9. *Hiring Your Own Lawyer.* [no change]

10. *Reporting Violations.* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the ~~Bar~~bar at ~~www.FlaBar.org~~[www.floridabar.org](http://www.floridabar.org).

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS,  
PLEASE ASK FOR AN EXPLANATION.**

**CERTIFICATE**

The undersigned ~~hereby~~ certifies that this Statement of Insured Client’s Rights has been provided to .....(name of insured/client(s)).....

by .....(mail/hand delivery)..... at .....(address of insured/client(s) to which mailed or delivered;) on .....(date).....

\_\_\_\_\_

[Signature of ~~Attorney~~Lawyer]

As originally requested by the bar and adopted by this Court, the certificate contained a comma where an end parenthesis should have been used in *Amendments to Rules Regulating the Florida Bar*, 820 So. 2d 210 (Fla. 2002).

[Print/Type Name] \_\_\_\_\_

Florida Bar No.: \_\_\_\_\_

**(k) Imputation of Conflicts.** While lawyers are associated in a firm, a prohibition in the foregoing subdivisions (a) through (i) that applies to any one of them ~~shall apply~~applies to all of them.

**COMMENT**

**Business transactions between client and lawyer**

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client. The requirements of subdivision (a) must be met even when the transaction is not closely related to the subject matter of the representation. The rule applies to lawyers engaged in the sale of goods or services related to the practice of law. See rule 4-5.7. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 4-1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment for all or part of a fee. In addition, the rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. ~~In such~~In these types of transactions the lawyer has no advantage in dealing with the client, and the restrictions in subdivision (a) are unnecessary and impracticable. Likewise, subdivision (a) does not prohibit a lawyer from acquiring or asserting a lien granted by law to secure the lawyer's fee or expenses.

Subdivision (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subdivision (a)(2) requires that the client also be advised, in



writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain ~~such~~ advice. Subdivision (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See terminology (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subdivision (a), but also with the requirements of rule 4-1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. ~~Moreover, the~~ The lawyer also must obtain the client's informed consent. In some cases, ~~the lawyer's interest may be such that~~ rule 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction because of the lawyer's interest.

If the client is independently represented in the transaction, subdivision (a)(2) of this rule is inapplicable, and the subdivision (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subdivision (a)(1) further requires.

### **Gifts to lawyers**

A lawyer may accept a gift from a client, if the transaction meets general

standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although ~~such a~~the gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a ~~substantial~~ gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a ~~substantial~~ gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee ~~or the gift is not substantial.~~

This rule does not prohibit a ~~lawyer from seeking to have the lawyer~~ or a partner or associate of the lawyer ~~named from serving~~ as personal representative of the client's estate or ~~to~~in another potentially lucrative fiduciary position in connection with a client's estate planning. A lawyer may prepare a document that appoints the lawyer or a person related to the lawyer to a fiduciary office if the client is properly informed, the appointment does not violate rule 4-1.7, the appointment is not the product of undue influence or improper solicitation by the lawyer, and the client gives informed consent, confirmed in writing. ~~Nevertheless, 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.~~ In obtaining the client's informed consent to the conflict, the lawyer should advise the client in writing concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position who is eligible to serve as a fiduciary, that a person who serves as a fiduciary is entitled to compensation, and that the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorneys' fees that the lawyer or the lawyer's firm may earn for serving as a lawyer

for the fiduciary.

### **Literary rights**

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subdivision (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee ~~shall~~will consist of a share in ownership in the property if the arrangement conforms to rule 4-1.5 and subdivision (a) and (i).

### **Financial assistance**

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because ~~such~~financial assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer advancing a client court costs and litigation expenses, including the expenses of diagnostic medical examination used for litigation purposes and the reasonable costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

### **Person paying for lawyer's services**

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company), or a co-client (such as a corporation sued along with one or more of its employees). Because

third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing ~~such~~ these representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also rule 4-5.4(d) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with rule 4-1.7. The lawyer must also conform to the requirements of rule 4-1.6 concerning confidentiality. Under rule 4-1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under rule 4-1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subdivision. Under rule 4-1.7(b), the informed consent must be confirmed in writing or clearly stated on the record at a hearing.

#### **Aggregate settlements**

[no change]

#### **Acquisition of interest in litigation**

[no change]

#### **Representation of insureds**

As with any representation of a client when another person or client is paying for the representation, the representation of an insured client at the request of the insurer

creates a special need for the lawyer to be cognizant of the potential for ethical risks. The nature of the relationship between a lawyer and a client can lead to the insured or the insurer having expectations inconsistent with the duty of the lawyer to maintain confidences, avoid conflicts of interest, and otherwise comply with professional standards. When a lawyer undertakes the representation of an insured client at the expense of the insurer, the lawyer should ascertain whether the lawyer will be representing both the insured and the insurer, or only the insured. Communication with both the insured and the insurer promotes their mutual understanding of the role of the lawyer in the particular representation. The Statement of Insured Client's Rights has been developed to facilitate the lawyer's performance of ethical responsibilities. The highly variable nature of insurance and the responsiveness of the insurance industry in developing new types of coverages for risks arising in the dynamic American economy render it impractical to establish a statement of rights applicable to all forms of insurance. The Statement of Insured Client's Rights is intended to apply to personal injury and property damage tort cases. It is not intended to apply to workers' compensation cases. Even in that relatively narrow area of insurance coverage, there is variability among policies. For that reason, the statement is necessarily broad. It is the responsibility of the lawyer to explain the statement to the insured. In particular cases, the lawyer may need to provide additional information to the insured.

Because the purpose of the statement is to assist laypersons in understanding their basic rights as clients, it is necessarily abbreviated. Although brevity promotes the purpose for which the statement was developed, it also necessitates incompleteness. For these reasons, it is specifically provided that the statement ~~shall~~does not ~~serve to~~ establish any legal rights or duties, nor create any presumption that an existing legal or ethical duty has been breached. As a result, the statement and its contents should not be invoked by opposing parties as grounds for disqualification of a lawyer or for procedural purposes. The purpose of the statement would be subverted if it could be used in such a manner.

The statement is to be signed by the lawyer to establish that it was timely provided to the insured, but the insured client is not required to sign it. It is in the best

The Real Property Probate and Trust Law Section proposes 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

interests of the lawyer to have the insured client sign the statement to avoid future questions, but it is considered impractical to require the lawyer to obtain the insured client's signature in all instances.

Establishment of the statement and the duty to provide it to an insured in tort cases involving personal injury or property damage should not be construed as lessening the duty of the lawyer to inform clients of their rights in other circumstances. When other types of insurance are involved, when there are other third-party payors of fees, or when multiple clients are represented, similar needs for fully informing clients exist, as recognized in rules 4-1.7(c) and 4-1.8(f).

### **Imputation of prohibitions**

[no change]

\* \* \*

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 the 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).

**SUBCHAPTER 4-5 LAW FIRMS AND ASSOCIATIONS**

\* \* \*

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

**(a) Contractual Relationship Between Law Firm and Clients.** The contract for legal services creates the legal relationships between the client and law firm and between the client and individual members of the law firm, including the ownership of the files maintained by the lawyer or law firm. Nothing in these rules creates or defines those relationships.

**(b) Client’s Right to Counsel of Choice.** Clients have the right to expect that they may choose counsel when legal services are required and, with few exceptions, nothing that lawyers and law firms do ~~shall have any effect on~~ affects the exercise of that right.

**(c) Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* Absent a specific agreement otherwise, a lawyer who is leaving a law firm ~~shall may~~ not unilaterally contact those clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer has approached an authorized representative of the law firm and attempted to negotiate a joint communication to the clients concerning the lawyer leaving the law firm and bona fide negotiations have been unsuccessful.

(2) *Dissolution of Law Firm.* Absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm ~~shall may~~ not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

**(d) Form for Contact With Clients.**

(1) *Lawyers Leaving Law Firms.* When a joint response has not been

The Law Office Management Assistance Service 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 new program and Florida bar department are 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 brandable. The new role of Practice Resource Institute does not include onsite reviews/consultations of law offices. It essentially functions as a law practice/office management and law office technology help desk and resource center using practice management advisors to

successfully negotiated, unilateral contact by individual members or the law firm ~~shall~~must give notice to clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms.

(2) *Dissolution of Law Firms.* When a law firm is being dissolved and no procedure for contacting clients has been agreed ~~upon~~to, unilateral contact by members of the law firm ~~shall~~must give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(3) *Liability for Fees and Costs.* In all instances, notice to the client required under this rule ~~shall~~must provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled. In addition, if appropriate, notice ~~shall~~must be given that reasonable charges may be imposed to provide a copy of any file to a successor lawyer.

**(e) Nonresponsive Clients.**

(1) *Lawyers Leaving Law Firms.* In the event a client fails to advise the lawyers and law firm of the client's intention in regard to who is to provide future legal services when a lawyer is leaving the firm, the client ~~shall be considered as remaining~~remains a client of the firm until the client advises otherwise.

(2) *Dissolution of Law Firms.* In the event a client fails to advise the lawyers of the client's intention in regard to who is to provide future legal services when a law firm is dissolving, the client ~~shall be considered as remaining~~remains a client of the lawyer who primarily provided the prior legal services on behalf of the firm until the client advises otherwise.

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.



## COMMENT

The current rule of law regarding ownership of client files is discussed in *Donahue v. Vaughn*, 721 So.-2d 356 (Fla. 5th DCA 1998), and *Dowda & Fields, P.A. v. Cobb*, 452 So.-2d 1140 (Fla. 5th DCA 1984). A lawyer leaving a law firm, when the law firm remains available to continue legal representation, has no right nor expectation to take client files without an agreement with the law firm to do so.

While clients have the right to choose counsel, ~~such that~~ choice may implicate obligations. ~~Those obligations may include~~ such as a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file.

Whether individual members have any individual legal obligations to a client is a matter of contract law, tort law, or court rules that is outside the scope of rules governing lawyer conduct. Generally, individual lawyers have such obligations only if provided for in the contract for representation. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to clients as provided elsewhere in these rules.

~~It is anticipated that in~~ In most instances a lawyer leaving a law firm and the law firm ~~will~~ should engage in bona fide, good faith negotiations and craft a joint communication providing adequate information to the client so that the client may make a fully informed decision concerning future representation. In those instances in which bona fide negotiations are unsuccessful, unilateral communication may be made by the departing lawyer or the law firm. In ~~such those~~ circumstances, great care should be taken to meet the obligation of adequate communication and for this reason the specific requirements of subdivisions (d)(1) & (3) are provided.

Lawyers and firms should engage in bona fide, good faith negotiations within a reasonable period of time following their knowledge of either the anticipated change in firm composition or, if the anticipated change is unknown, within a reasonable period of time after the change in firm composition. The actual notification to clients

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 and is an editorial correction made by staff that was not approved by the Board of Governors nor noticed in the *Florida Bar News*, but was made under the authority granted to staff by this Court under this Court's administrative order AOSC06-14, dated June 14, 2006.

should also occur within a reasonable period of time. What is reasonable will depend on the circumstances, including the nature of the matters in which the lawyer represented the clients and whether the affected clients have deadlines that need to be met within a short period of time.

For purposes of this rule, clients who should be notified of the change in firm composition include current clients for whom the departing lawyer has provided significant legal services with direct client contact. Clients need not be notified of the departure of a lawyer with whom the client has had no direct contact. Clients whose files are closed need not be notified unless the former client contacts the firm, at which point the firm should notify the former client of the departure of any lawyer who performed significant legal services for that former client and had direct contact with that former client.

Although contact by telephone is not prohibited under this rule, proof of compliance with the requirements of this rule may be difficult unless the notification is in writing.

In order to comply with the requirements of this rule, both departing lawyers and the law firm should be given access to the names and contact information of all clients for whom the departing lawyer has provided significant legal services and with whom the lawyer has had direct contact.

If neither the departing lawyer nor the law firm intends to continue representation of the affected clients, they may either agree on a joint letter providing that information to those clients, or may separately notify the affected clients after bona fide, good faith negotiations have failed. Any obligation to give the client reasonable notice, protect the client's interests on withdrawal, and seek permission of a court to withdraw may apply to both the departing lawyer and lawyers remaining in the firm.

Most law firms have some written instrument creating the law firm and specifying procedures to be employed upon dissolution of the firm. However, when such an instrument does not exist or does not adequately provide for procedures in the event of

Proposed amendments are based on questions received by bar staff 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? These issues are addressed in commentary so that

dissolution, the provisions of this rule are provided so that dissolution of the law firm does not disproportionately affect client rights.

As in instances of a lawyer departing a law firm, lawyers involved in the dissolution of law firms have a continuing obligation to provide adequate information to a client so that the client may make informed decisions concerning future representation.

The Florida Bar's ~~Law Office Management Advisory Service~~ Practice Resource Institute has sample forms for notice to clients and sample partnership and other contracts that are available to members. The forms may be accessed on the bar's website, ~~www.flabar.org~~ www.floridabar.org, or by calling The Florida Bar headquarters in Tallahassee.

Lawyers involved in either a change in law firm composition or law firm dissolution may have duties to notify the court if the representation is in litigation. If the remaining law firm will continue the representation of the client, no notification of the change in firm composition to the court may be required, but such a notification may be advisable. If the departing lawyer will take over representation of the client, a motion for substitution of counsel or a motion by the firm to withdraw from the representation may be appropriate. If the departing lawyer and the law firm have made the appropriate request for the client to select either the departing lawyer or the law firm to continue the representation, but the client has not yet responded, the law firm should consider notifying the court of the change in firm composition, although under ordinary circumstances, absent an agreement to the contrary, the firm will continue the representation in the interim. If the departing lawyer and the law firm have agreed regarding who will continue handling the client's matters then, absent disagreement by the client, the agreement normally will determine whether the departing lawyer or the law firm will continue the representation.

\* \* \*

lawyers will have guidance on how the requirements of the rule can be met under specific circumstances.

This amendment addresses the change in name from the Law Office Management Advisory Service to Practice Resource Institute as addressed in more detail above.

This amendment changes to the bar's actual website addressed, which has changed.

**SUBCHAPTER 4-7 INFORMATION ABOUT LEGAL SERVICES**

\* \* \*

**RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS**

A lawyer may not engage in potentially misleading advertising.

**(a) Potentially Misleading Advertisements.** Potentially misleading advertisements include, but are not limited to:

(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(3) references to a lawyer's membership in, or recognition by, an entity that purports to base ~~such~~the membership or recognition on a lawyer's ability or skill, unless the entity conferring ~~such~~the membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;

(4) a statement that a lawyer is board certified, ~~a specialist, an expert,~~ or other variations of ~~those~~that terms unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating the Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association

or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.

(5) a statement that a lawyer is a specialist, an expert, or other variations of those terms unless:

(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating the Florida Bar and the advertisement includes the area of certification and that The Florida Bar is the certifying organization;

(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization;

(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of

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 Florida 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

these rules and the advertisement includes the area of certification and the name of the certifying organization; or

(D) the lawyer's experience and training demonstrate specialized competence in the advertised area of practice that is reasonably comparable to that demonstrated by the standards of the Florida Certification Plan set forth in chapter 6 of these rules and, if the area of claimed specialization or expertise is or falls within an area of practice under the Florida Certification Plan, the advertisement includes a reasonably prominent disclaimer that the lawyer is not board certified in that area of practice by The Florida Bar or another certification program if the lawyer is not board certified in that area of practice.

In the absence of such certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law; or

(56) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.

**(b) Clarifying Information.** A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

#### COMMENT

#### **Awards, ~~Honor~~honors, and ~~Ratings~~ratings**

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.

Within the comment to rule 4-7.14, as originally requested by the bar and adopted by this Court, the headers all have initial

Awards, honors and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

**Claims of Board Certification, Specialization or Expertise**

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to indicate that. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as a "~~specialist,~~" "~~specializing,~~" "~~certified,~~" or "board certified," being an "expert," having "expertise," or any variation of similar import. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as a "specialist,"

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. The correction is a staff correction which was not approved by the Board of Governors or noticed in the Florida Bar News.

"specializing," being an "expert," having "expertise," or any variation of similar import unless the lawyer meets standards reasonably comparable to the certification standards set forth in chapter 6 of these rules and the statement is accompanied by a reasonably prominent disclaimer that the lawyer is not board certified in that area of practice by The Florida Bar or another certification program if the area of claimed specialization or expertise is or falls within an area of certification under Florida's certification plan. Reasonably comparable standards that a lawyer must meet do not include the examination and peer review portions of the certification standards set forth in chapter 6 of these rules. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified, ~~has expertise in, or specializes~~ in any area of practice.

A lawyer can only state or imply that the lawyer is "certified," a "~~specialist,~~" or an "~~expert~~" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may ~~so~~ state that, but may not state that the lawyer is certified, ~~an expert in, or specializes~~ in personal injury. ~~Similarly, a lawyer who is board certified in marital and family law may not state that the lawyer specializes in divorce.~~

### **Fee and Cost Information**cost information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

Commentary further explains and clarifies proposed amendments regarding use of "expert," "specialist" and similar terms in response to the federal court order described above.



However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

\* \* \*

**RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

**(a) Solicitation.** Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, ~~in person or otherwise~~, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, ~~telegraph, or facsimile~~, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient ~~and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting~~ that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

**(b) Written Communication.**

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer

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.

knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each ~~page~~separate enclosure of such communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the

"advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, ~~and on each panel of the inside of the brochure or pamphlet, and on each separate enclosure.~~ If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement." ~~Brochures solicited by clients or prospective clients need not contain the "advertisement" mark.~~

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written

communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter ~~shall~~must not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

### COMMENT

#### **Prior Professional Relationship**

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization

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.

does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

#### **Disclosing Where the Lawyer Obtained Information**

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's

matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

### **Group or Prepaid Legal Services Plans**

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

\* \* \*

## CHAPTER 5 RULES REGULATING TRUST ACCOUNTS

### SUBCHAPTER 5-1 GENERALLY

#### RULE 5-1.1 TRUST ACCOUNTS

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

(1) *Trust Account Required; Location of Trust Account; Commingling Prohibited.* A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except:

(A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and

(B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust account by the lawyer.

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

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 in federally insured credit unions. 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.

The rule is amended to give lawyers and their clients additional safe options for holding client trust accounts in federally insured credit unions.



than in a separate account.

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

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

**(c) Liens Permitted.** This subchapter does not preclude the retention of money or other property ~~upon~~ which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

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

**(e) Notice of Receipt of Trust Funds; Delivery; Accounting.** ~~Upon~~ On receiving funds or other property in which a client or third person has an interest, a lawyer ~~shall~~ must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer ~~shall~~ must

promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, ~~shall~~must promptly render a full accounting regarding ~~such~~the property.

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

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

(1) *Definitions.* As used in this rule, the term:

(A) "Nominal or short term" describes funds of a client or third person that, ~~pursuant to subdivision (3), below,~~ the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

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

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

(D) "Eligible Institution" means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance entities or corporation(s) established by federal or state laws, or

The rule is amended to give lawyers and their clients additional safe options for holding client trust accounts in federally insured credit unions.

any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

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

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida ~~shall~~ must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term ~~shall~~ must be deposited into an IOTA account. The Florida bar member ~~shall~~ must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

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

judgment, the lawyer ~~shall~~must consider such factors as the:

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

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

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

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

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

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

(4) *Notice to Foundation.* Lawyers or law firms ~~shall~~must advise the ~~Foundation~~foundation, at ~~Post Office Box 1553, Orlando, Florida 32802-1553, its~~ current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. ~~Such~~The notice ~~shall~~must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar ~~attorney~~ number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

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.

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

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

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

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

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

(ii) transmit with each remittance to the ~~Foundation~~foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the

period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

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

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

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

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

**(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners.** When ~~an attorney's~~a lawyer's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held

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

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

- (1) ~~when the deposit is made by~~ certified check or cashier's check;
- (2) ~~when the deposit is made by~~ a check or draft representing loan proceeds

issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) ~~when the deposit is made by a~~ bank check, official check, treasurer's check, money order, or other ~~such~~ instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer's trust account within a reasonable period of time;

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

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

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

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



later dishonored personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, ~~the lawyer shall not be considered guilty of professional misconduct.~~

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

### COMMENT

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

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

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

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

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

dispute, such as arbitration. The undisputed portion of the funds ~~shall~~must be promptly distributed.

Third parties, such as a client’s creditors, may have lawful claims against funds or other property in a lawyer’s custody. A lawyer may have a duty under applicable law to protect ~~such~~these third-party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The Supreme Court of Florida has held that lawyer trust accounts may be the proper target of garnishment actions. ~~See~~See *Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.* 982 So.-2d 628 (Fla. 2008). Under certain circumstances lawyers may have a legal duty to protect funds in the lawyer's trust account that have been assigned to doctors, hospitals or other health care providers directly or designated as Medpay by an insurer. See *The Florida Bar v. Silver*, 788 So. 2d 958 (Fla. 2001) (lawyer disciplined for failure to pay Medpay funds to doctor to whom benefits had been assigned by letter of protection); *The Florida Bar v. Krasnove*, 697 So.2d 1208 (Fla. 1997) (lawyer suspended for one year for failing to pay medical providers from settlement); *The Florida Bar v. Neely*, 587 So.2d 465 (Fla. 1991) (lawyer disbarred for, among other violations, disbursing to client funds that should have been paid to doctor to whom benefits had been assigned); Florida Ethics Opinion 02-4.

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

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

In the added commentary, there were originally spaces between “So.” and “2d” as originally approved by the Board of Governors and noticed in the Florida Bar News that are incorrect blue book citation that has been editorially corrected by staff under the authority granted to staff by this Court to correct errors in this Court’s administrative order AOSC06-14, dated June 14, 2006.

transaction involving the escrowed funds, the Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties having an interest in escrowed funds whether the funds are in a lawyer's trust account or a separate escrow account. *The Florida Bar v. Golden*, 455 So.2d 1286 (Fla. 1990) (lawyer who represented buyer in real estate transaction and also acted as escrow agent for buyer and seller, had fiduciary duty to all parties to transaction and was disciplined for wrongfully returning deposit to his client when escrow agreement stated that seller would retain escrowed funds in event of breach); *See also The Florida Bar v. Hines*, 39 So.3d 1196 (Fla. 2010) (lawyer who was title agent, closing agent and escrow agent for real estate transaction owed fiduciary duty to all parties to the transaction); *The Florida Bar v. Marrero*, 187 So.3d 1020 (Fla. 2015) (attorney acting as escrow agent disciplined for violating fiduciary duty to parties to transaction, misrepresentation and trust account violations).

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

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

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

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

account.

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

**RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES**

**(a) Applicability.** [no change]

**(b) Minimum Trust Accounting Records.** [no change]

**(c) Responsibility of Lawyers for Firm Trust Accounts and Reporting.**

(1) Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm’s trust account(s), which plan must be disseminated to each lawyer in the firm. The written plan must include the name(s) of the ~~lawyer(s) who sign trust account checks~~ signatories for the law firm’s trust accounts, the name(s) of the lawyer(s) who are responsible for reconciliation of the law firm’s trust account(s) monthly and annually and the name(s) of the lawyer(s) who are responsible for answering any questions that lawyers in the firm may have about the firm’s trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the ~~lawyer(s) signing trust account checks~~ signatories and/or lawyer(s) responsible for reconciliation of the firm’s trust account(s).

(2) Every lawyer is responsible for that lawyer’s own actions regarding trust account funds subject to the requirements of chapter 4 of these rules. Any lawyer who has actual knowledge that the firm’s trust account(s) or trust accounting procedures are not in compliance with chapter 5 may report the noncompliance to the managing partner or shareholder of the lawyer’s firm. If the noncompliance is not corrected within a reasonable time, the lawyer must report the noncompliance to staff counsel for the bar if required to do so pursuant to the reporting requirements of chapter 4.

**(d) Minimum Trust Accounting Procedures.** [no change]

**(e) Electronic Wire Transfers.** [no change]

The amendments are for agreement of rules and internal consistency, in making subdivision (c) 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)*, 39 Fla. L. Weekly S185; 140 So. 3d 541, (Fla. corr. op. May 29, 2014), effective June 1, 2014. In that case, this Court declined to restrict signing authority in lawyer trust accounts to Florida bar members. The amendments clarify that signatory authority is not limited to Florida bar members.

**(f) Record Retention.** [no change]

**(g) Audits.** Any of the following are cause for The Florida Bar to order an audit of a trust account:

(1) failure to file the trust account certificate required by this rule 5-1.2(e)(5);

(2) report of trust account violations or errors to staff counsel under this rule;

(23) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;

(34) filing of a petition for creditor relief on behalf of a lawyer;

(45) filing of felony charges against a lawyer;

(56) adjudication of insanity or incompetence or hospitalization of a lawyer under The Florida Mental Health Act;

(67) filing of a claim against a lawyer with the Clients' Security Fund;

(78) ~~when requested~~ request by the chair or vice chair of a grievance committee or the board of governors; ~~or~~

(89) on court order; or

(910) on entry of an order of disbarment, on consent or otherwise.

**(h) Cost of Audit.** [no change]

**(i) Failure to Comply With Subpoena for Trust Accounting Records.** [no change]

The amendments are for agreement of rules and internal consistency, in making subdivision (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)*, 39 Fla. L. Weekly S185; 140 So. 3d 541, (Fla. corr. op. May 29, 2014), effective June 1, 2014.

**CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS**

\* \* \*

**SUBCHAPTER 6-3 FLORIDA CERTIFICATION PLAN**

\* \* \*

**RULE 6-3.7 INACTIVE STATUS**

**(a) Purpose.** Inactive status as to board certification under chapter 6, Rules Regulating the Florida Bar, is available to eligible members who apply and qualify under this rule.

**(b) Applicability.** Eligible members are:

(1) *Judicial Officers.* A board certified member who is appointed or elected as a judicial officer will be permitted to retain board certification in an inactive status if the member files a properly executed application and if the member is determined eligible under this rule. For purposes of this rule, the term "judicial officer" includes:

(A) members of the United States Constitution Article III federal judiciary;

(B) justices of the Supreme Court of Florida;

(C) judges of the district courts of appeal;

(D) judges of the circuit and county courts;

(E) magistrates employed through the court system who are prohibited from practicing law;

(F) masters employed through the court system who are prohibited from practicing law; and

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.

(G) any other judicial officers, as determined by the BLSE who are prohibited from practicing law.

(2) *Law Professors.* A board certified member who does not practice law or ceases to practice law for the purpose of teaching law will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member must agree not to practice law if granted inactive status under this rule. For purposes of this rule, the term “teaching” includes only accredited law school and graduate law courses.

(3) *Professional Neutrals.* A board certified member who does not practice law or ceases to practice law for the purpose of being or becoming a mediator, arbitrator or voluntary trial resolution judge will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member must agree not to practice law if granted inactive status under this rule.

(4) *Military Personnel.* A board certified member who is called to active duty will be permitted to retain board certification in an inactive status if the member files a properly executed application and is determined eligible under this rule. The member will be exempt from the continuing legal education required for recertification applicable to the member’s practice area during the period of active military duty.

(5) *Extended Substantial Hardship Cases.* A board certified member who is not otherwise eligible under this rule, but is unable to practice law because of a unique substantial and material hardship, medical or otherwise, may be permitted to retain board certification in an inactive status if the member files an application that is approved by the BLSE. The BLSE may impose terms and conditions, waive any requirements, or extend the time within which recertification requirements must be met. The BLSE may seek the advice of the relevant area certification committee in determining whether to grant the application, what



conditions should be imposed, or what waivers should be granted.

(6) *Not Currently Certified Members.* During the 2 years following the effective date of this policy, any member who voluntarily relinquished board certification before the effective date of this rule, but who is otherwise eligible for inactive status, may be granted inactive status on approval by the BLSE.

**(c) Qualifications.**

(1) *Compliance with Policies.* A member who is granted board certified inactive status must maintain an active membership with The Florida Bar, obtain continuing legal education credits required for recertification applicable to the member's practice area (unless otherwise exempt under the policies), and otherwise comply with the applicable rules and policies governing board certification. The member's 5-year recertification cycle will remain intact and the member must report completion of the continuing legal education credits at the end of each 5-year cycle, unless otherwise exempt under the policies.

(2) *Annual Confirmation of Inactive Status.* A member who is granted board certified inactive status must confirm continued eligibility on an annual basis on a form approved by the BLSE.

(3) *Communication.* While board certified inactive, the member must use the phrase "board certified inactive" and include the practice area as a means by which to distinguish board certification. On reactivation, the member may communicate board certification as otherwise permitted in the Rules Regulating The Florida Bar.

(4) *Annual Fee.* A member who is board certified inactive status must pay an annual fee equal to one-half of the fee required of board certified members.

**(d) Revocation or Relinquishment of Board Certified Inactive Status.**

(1) *Revocation for Noncompliance.* The BLSE can revoke board certified

inactive status if the member fails to comply with the policies or as provided under policy 2.15. On revocation, the member cannot use the phrase board certified inactive. Unless and until the member is reactivated to board certified status, the member cannot use the phrase board certified, or any other term permitted for use by board certified lawyers in the Rules Regulating The Florida Bar. If revocation is considered, the same notice and hearing provisions set forth in BLSE policy 2.15(d) apply.

(2) *Relinquishment.* A board certified inactive member must notify the BLSE in writing within 90 days if the member no longer qualifies for, or desires to retain, inactive status. The member must cease to use the phrase board certified inactive and must immediately apply for reactivation of board certification or relinquish board certification.

**(e) Reactivation to Board Certified Status and Recertification.**

(1) *Reactivation Requirements.* If the member no longer qualifies for, or desires to retain, board certified inactive status, the member may apply for reactivation of board certification within 90 days. The member must demonstrate compliance with the continuing legal education requirement for the applicable practice area, unless otherwise exempt under the policies, be a member in good standing with The Florida Bar who is eligible to practice law in Florida, and otherwise comply with the applicable rules and policies governing board certification. On review that the requirements have been satisfied, board certification will be reactivated.

(2) *Reactivation Fee.* Members who apply for reactivation of board certification must pay a fee equal to one-half of the fee required to apply for recertification.

(3) *Recertification after Reactivation.* On reactivation, the member must apply for recertification by the application filing deadline consistent with the member's 5-year certification cycle. The requirements for recertification may be

prorated by the relevant area certification committee if approved by the BLSE.

\* \* \*

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

**RULE 6-31.1 GENERALLY**

A lawyer who is a member in good standing of The Florida Bar, eligible to practice law in Florida, and meets the standards prescribed below may be issued a certificate identifying the lawyer as "Board Certified in International Litigation and Arbitration." The purpose of the standards is to identify those lawyers who have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in international litigation and arbitration.

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.

**RULE 6-31.2 DEFINITIONS**

**(a) International Litigation and Arbitration.** “International litigation and arbitration” is the practice of law dealing with disputes in court or arbitration arising from the relations between or among states and international organizations as well as the relations between or among nationals of different states, or between a state and a national of another state. The term “international litigation and arbitration” includes foreign and comparative law.

**(b) Practice of Law.** The “practice of law” for this area is defined as set out in rule 6-3.5(c)(1). Practice of law that otherwise satisfies these requirements but that is on a part-time basis will satisfy the requirement if the balance of the applicant's qualifying activity is spent as a teacher of international litigation and arbitration subjects in an accredited law school.

**(c) International Litigation and Arbitration Certification Committee.** The international litigation and arbitration certification committee will consist of 9 members. The international litigation and arbitration committee members will initially be appointed according to the criteria set forth in rule 6-3.2(a).

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.

### **RULE 6-31.3 MINIMUM STANDARDS**

The applicant must demonstrate the following on a form approved by the committee, which may require additional written or oral supplementation.

**(a) Minimum Period of Practice.** The applicant must have engaged in the practice of law, either in the United States or abroad, and must have been a member in good standing and eligible to practice law in their jurisdiction not less than 5 years as of the date of application. The years of law practice need not be consecutive. Receipt of an LL.M degree in international law, as defined in rule 6-21.2(a), or in another field, may be approved by the international litigation and arbitration certification committee to constitute 1 year of the practice of law requirement, but not the 5-year bar membership requirement, specified in this subdivision.

**(b) Substantial Involvement.** The applicant must demonstrate substantial involvement in the practice of international litigation and/or arbitration during each of the 3 years immediately preceding the date of application. The applicant must have substantial involvement in contested international litigation and arbitration cases sufficient to demonstrate special competence as an international litigation and arbitration lawyer. Substantial involvement includes active participation in client interviewing, counseling and investigating, preparation of pleadings and arbitration submissions, participation in discovery, taking of testimony, presentation of evidence, negotiation of settlement, drafting and preparation of settlement agreements, and argument and trial of international cases in court or before and arbitral panel, or service as an arbitrator. For purposes of this section, time devoted to lecturing on or writing about international litigation and arbitration may be included.

**(c) Minimum Number of Matters.** The applicant must have had substantial involvement in a minimum of 16 contested international litigation and arbitration matters during the 8-year period immediately preceding application. These matters must have proceeded at least to the filing of a complaint or similar preceding, statement of claim, or demand for arbitration, and involve substantial legal or factual issues. At least 5 of the 16 matters must have been submitted to the trier of fact for

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.

resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, an arbitration panel, administrative agency, bankruptcy court, or other similar body. "Submission to the trier of fact" requires completion of the case in chief of the plaintiff, petitioner, or claimant or, the actual submission of a motion for summary judgement or the response to that motion. The international litigation and arbitration certification committee may consider involvement in protracted adversary proceedings to satisfy any of these requirements. A "protracted adversary proceeding" is an international litigation and arbitration matter that is so time consuming it precludes the applicant from meeting the requirements of this subdivision.

In order to demonstrate compliance with the requirements of this section, the following criteria will be applicable:

(1)summary judgments may not count for more than 3 of the 5 contested matters submitted to the trier of fact;

(2)submission to the trier of fact, other than as to summary judgment, requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the equivalent in arbitration;

(3)each preliminary injunction or other evidentiary hearing will count as 1 of the 5 matters submitted to the trier of fact; and

(4)each matter in which the applicant supervises an associate will qualify the matter as 1 of the 16, but not as 1 of the 5 matters submitted to the trier of fact.

**(d) Education.** The applicant must demonstrate that during the 5-year period immediately preceding the date of application, the applicant has completed at least 50 hours of continuing legal education in the field of international litigation and arbitration according to the policies established by the committee or the board of legal specialization and education. This requirement can be met through the following

activities to the extent that they are focused on international litigation and arbitration:

(1) attendance at continuing legal education seminars;

(2) satisfactory completion of graduate-level law school courses while enrolled in an LL.M program in international law or comparative law;

(3) satisfactory completion of graduate-level law school courses involving international law aspects while enrolled in a graduate law program;

(4) lecturing at continuing legal education seminars;

(5) authoring articles on books or teaching courses at an accredited law school.

**(e)Peer Review.** The applicant must submit the names and addresses of 5 lawyers or judges who are neither relatives nor current associates or partners of the applicant to attest to the applicant's substantial involvement, practical experience, and special competence in international litigation and/or arbitration, as well as the applicant's character, ethics, and reputation for professionalism. The international litigation and arbitration certification committee may send reference forms to other lawyers and judges.

**(f) Examination.** The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, and proficiency in international litigation and arbitration to justify the representation of special competence to the legal profession and the public.

**(g)Exemption.** An applicant who has been substantially involved in international litigation and arbitration for a minimum of 20 years and who otherwise fulfills the standards set forth in rule 6-3.5(d) and this subchapter is exempt from the examination. This exemption is applicable only to those applicants who apply within the first 2 application filing periods from the effective date of these standards.



**RULE 6-31.4 INTERNATIONAL LITIGATION AND ARBITRATION  
RECERTIFICATION**

During the 5-year period immediately preceding the date of application for recertification, the applicant must satisfy the following requirements for recertification:

**(a) Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in the practice of international litigation and arbitration since the last date of certification or recertification. The demonstration of substantial involvement must be made in accordance with the standards set forth in this subchapter.

**(b) Matters.** The applicant must have had substantial involvement in a minimum of 10 contested international litigation and arbitration matters during the 5-year period immediately preceding reapplication. These matters must have proceeded at least to the filing of a complaint or similar pleading, statement of claim, or demand for arbitration, and involve substantial legal or factual issues. At least 3 of the 10 matters must have been submitted to the trier of fact for resolution of 1 or more contested factual issues through the presentation of live testimony or other evidence at a hearing. The trier of fact includes any judge or jury of a court of general jurisdiction, and arbitration panel, administrative agency, bankruptcy court, or other similar body. "Submission to the trier of fact" requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the actual submission of a motion for summary judgement or response to that motion. The international litigation and arbitration certification committee may consider involvement in protracted adversary proceedings to satisfy and of these requirements for good cause shown. A "protracted adversary proceeding" is an international litigation and arbitration matter that is so time consuming it precludes the applicant from meeting the requirements of this subdivision.

The applicant must demonstrate compliance on a form approved by the committee

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.

using the following criteria:

(1) summary judgments may not count as more than 1 of the 3 matters submitted to the trier of fact;

(2) submission to the trier of fact, other than as to summary judgment, requires completion of the case in chief of the plaintiff, petitioner, or claimant, or the equivalent in arbitration;

(3) each preliminary injunction or other evidentiary hearing will count as 1 of the 3 matters submitted to the trier of fact; and

(4) each matter in which the applicant supervises an associate will qualify as 1 of the 10, but not as 1 of the 3, matters submitted to the trier of fact.

**(c) Education.** The applicant must show completion of at least 50 hours of approved continuing legal education in international litigation and arbitration since the filing of the last application for certification as provided in this subchapter.

**(d) Peer Review.** The applicant must submit the names and addresses of 5 other lawyers or judges who are familiar with the applicant's practice, excluding individuals who currently are employed by the same employer as the applicant, and who can attest to the applicant's special competence and substantial involvement in international litigation and arbitration, as well as the applicant's character, ethics, and reputation for professionalism. The international litigation and arbitration certification committee may send reference forms to other lawyers and judges.

\* \* \*

**CHAPTER 10 RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF THE UNLICENSED PRACTICE OF LAW**

\* \* \*

**SUBCHAPTER 10-2 DEFINITIONS**

**RULE 10-2.1 GENERALLY**

Whenever used in these rules the following words or terms ~~shall~~ have the following meaning herein set forth unless the use thereof shall clearly indicate of the word or term clearly indicates a different meaning:

**(a) Unlicensed Practice of Law.** The unlicensed practice of law ~~shall mean~~ means the practice of law, as prohibited by statute, court rule, and case law of the state of Florida.

**(b) Paralegal or Legal Assistant.** A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the supervision of a member of The Florida Bar, an out-of-state lawyer engaged in the authorized practice of law in Florida or a foreign lawyer engaged in the authorized practice of law in Florida and who performs specifically delegated substantive legal work for which ~~a member of The Florida Bar member~~ the supervising lawyer is responsible. A nonlawyer or a group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the lawyer supervision required under this rule. It ~~shall constitute~~ constitutes the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant to use the title paralegal, legal assistant, or other similar term in offering to provide or in providing services directly to the public.

**(c) Nonlawyer or Nonattorney.** For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar. A suspended lawyer, while a member of The Florida

The current definition of paralegal requires that that the individual work under the direction and supervision of a member of The Florida Bar. 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.

Bar during the period of suspension as provided elsewhere in these rules, does not have the privilege of practicing law in Florida during the period of suspension. For purposes of this chapter, it ~~shall constitute~~constitutes the unlicensed practice of law for a lawyer admitted in a jurisdiction other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide.

**(d) This Court or the Court.** This court or the court ~~shall mean~~means the Supreme Court of Florida.

**(e) Bar Counsel.** Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules and includes UPL counsel and UPL staff counsel.

**(f) Respondent.** [no change]

**(g) Referee.** [no change]

**(h) Standing Committee.** [no change]

**(i) Circuit Committee.** [no change]

**(j) UPL Counsel.** [no change]

**(k) UPL.** [no change]

**(l) The Board or Board of Governors.** [no change]

**(m) Designated Reviewer.** The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned by the board of governors with respect to a particular circuit committee or matter. If a designated reviewer recuses or is unavailable, any other board member may serve as designated reviewer in that matter. The designated reviewer will be selected, ~~from time to time,~~ by the board members from the circuit of ~~such that~~ circuit committee. If circuits have an unequal number of circuit committees and board members, review responsibility

will be reassigned, ~~from time to time~~, to equalize workloads. On such reassignments, responsibility for all pending cases from a particular committee passes to the new designated reviewer. UPL staff counsel will be given written notice of changes in the designated reviewing members for a particular committee.

**(n) Executive Committee.** The executive committee is the executive committee of the Board of Governors of The Florida Bar. All acts and discretion required by the board under these rules may be exercised by its executive committee between meetings of the board as may ~~from time to time~~ be authorized by standing policies of the board of governors.

\* \* \*

## **SUBCHAPTER 10-3 STANDING COMMITTEE**

\* \* \*

### **RULE 10-3.2 DUTIES OF THE STANDING COMMITTEE**

It ~~shall be~~is the duty of the standing committee to receive and evaluate circuit committee reports and to determine whether litigation should be instituted in the court against any alleged offender. The standing committee may approve civil injunctive proceedings, indirect criminal contempt proceedings, or a combination of both, or ~~such other~~ action as ~~may be~~ appropriate. In addition, the duties of the standing committee ~~shall include~~, but are not ~~be~~ limited to:

(a) the consideration and investigation of activities that may, or do, constitute the unlicensed practice of law and exercising final authority to close cases not deemed by the standing committee to then warrant further action by The Florida Bar for unlicensed practice of law;

(b) ~~the~~ supervision of the circuit committees, which ~~shall include~~includes, but ~~is~~ not ~~be~~ limited to:

- (1) prescribing rules of procedure for circuit committees;
- (2) assigning reports of unlicensed practice of law for investigation;
- (3) reassigning or withdrawing matters previously assigned;
- (4) exercising final authority to close cases where UPL counsel or bar counsel objects to the closing of the case by the circuit committee;
- (5) exercising final authority to accept a cease and desist affidavit in cases proposed to be resolved by cease and desist affidavit where UPL counsel or bar counsel objects to the acceptance of a cease and desist affidavit; ~~and~~
- (6) exercising final authority to accept a cease and desist affidavit and monetary penalty in cases proposed by the circuit committee to be resolved by a

cease and desist affidavit that includes a monetary penalty not to exceed \$500 per incident;

(7) exercising final authority to accept a cease and desist affidavit with restitution to the complainant(s) in cases proposed by the circuit committee to be resolved by a cease and desist affidavit that includes restitution;

(78) joining with a circuit committee in a particular investigation;

(89) assigning staff investigators and bar counsel to conduct investigations on behalf of or in concert with the circuit committees; and

(910) suspending circuit committee members and chairs for cause and appointing a temporary circuit committee chair where there has been a suspension, resignation, or removal, pending the appointment of a permanent chair by the board of governors;

(c) ~~the~~ initiation and supervision of litigation, including ~~the~~ delegation of responsibility to bar counsel to prosecute ~~such~~the litigation;

(d) ~~the~~ giving of advice regarding the unlicensed practice of law policy to the officers, board of governors, staff, sections, or committees of The Florida Bar as requested; and

(e) furnishing any and all information, confidential records, and files regarding pending or closed investigations of unlicensed practice of law to any state or federal law enforcement or regulatory agency, United States Attorney, state attorney, the Florida Board of Bar Examiners and equivalent entities in other jurisdictions, and Florida bar grievance committees and equivalent entities in other jurisdictions where there is or may be a violation of state or federal law or the Rules of Professional Conduct of The Florida Bar.

\* \* \*

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.

## SUBCHAPTER 10-4 CIRCUIT COMMITTEES

### RULE 10-4.1 GENERALLY

**(a) Appointment and Terms.** Each circuit committee ~~shall~~will be appointed by the court on advice of the board of governors and ~~shall~~will consist of not fewer than 3 members, at least one-third of whom ~~shall~~will be nonlawyers. All appointees ~~shall~~must be residents of the circuit or have their principal office in the circuit. The terms of the members of circuit committees ~~shall be for~~are 3 years from the date of appointment by the court or until ~~such time as~~ their successors are appointed and qualified. Continuous service of a member ~~shall~~may not exceed 2 consecutive 3-year terms. A member ~~shall~~may not be reappointed for a period of 1 year after the end of the member's second term provided, however, the expiration of the term of any member ~~shall~~will not disqualify that member from concluding any investigations pending before that member. Any member of a circuit committee may be removed from office by the board of governors.

**(b) Committee Chair.** ~~For e~~Each circuit committee ~~there shall be~~will have a chair designated by the designated reviewer of that committee. A vice-chair and secretary may be designated by the chair of each circuit committee. The chair ~~shall~~must be a member of The Florida Bar.

**(c) Quorum.** Three members of the circuit committee or a majority of the members, whichever is less, ~~shall~~ constitute a quorum.

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



**(e) Duties.** It ~~shall be~~is the duty of each circuit committee to investigate, with dispatch, all reports of unlicensed practice of law and to make prompt report of its investigation and findings to bar counsel. In addition, the duties of the circuit committee ~~shall include, but are not be~~limited to:

(1) exercising final authority to close cases not deemed by the circuit committee to warrant further action by The Florida Bar except those cases to which UPL staff counsel objects to the closing of the case;

(2) exercising final authority to close a case with the acceptance of a letter of advice except those cases to which UPL staff counsel objects to the closing of the case with a letter of advice;

~~(23)~~ exercising final authority to close cases proposed to be resolved by cease and desist affidavit except those cases to which UPL staff counsel objects to the acceptance of a cease and desist affidavit;

~~(34)~~ forwarding to bar counsel for review by the standing committee recommendations for closing cases by a cease and desist affidavit that includes a monetary penalty not to exceed \$500 per incident; ~~and~~

(5) forwarding to bar counsel for review by the standing committee recommendations for closing cases by a cease and desist affidavit that includes restitution to the complainant(s); and

~~(4)(6)~~ forwarding to UPL staff counsel recommendations for litigation to be reviewed by the standing committee.

**(f) Circuit Committee Meetings.** [no change]

**(g) Recusal.** ~~No~~A member of a circuit committee ~~shall~~may not perform any circuit committee function when that member:

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 may 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.

(1) is related by blood or marriage to the complainant or respondent;

(2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;

(3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or

(4) is prejudiced or biased toward either the complainant or the respondent.

~~Upon~~On notice of any of the above prohibitions the affected members should recuse themselves from further proceedings. The circuit committee chair ~~shall~~has the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

\* \* \*

**SUBCHAPTER 10-5 COMPLAINT PROCESSING AND INITIAL INVESTIGATORY PROCEDURES**

\* \* \*

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

~~(a) Members of the Standing Committee on UPL (Standing Committee), Members of the Circuit UPL Committees (Circuit Committees), Members of the Board of Governors, and Employees of The Florida Bar.~~ No member of the standing committee, member of a circuit committee, member of the Board of Governors of The Florida Bar, or employee of The Florida Bar shall represent a party other than The Florida Bar in UPL proceedings authorized under these rules.

~~(b) Former Members of the Standing Committee, Former Members of the Circuit Committees, Former Board Members, and Former Employees.~~ No former member of the standing committee, former member of a circuit committee, former member of the board of governors, or former employee of The Florida Bar shall represent any party other than The Florida Bar in UPL proceedings authorized under these rules if personally involved to any degree in the matter while a member of the standing committee, circuit committee, board of governors, or while an employee of The Florida Bar.

~~A former member of the standing committee, former member of a circuit committee, former member of the board of governors, or former employee of The Florida Bar who did not participate personally in any way in the matter or in any related matter in which the attorney seeks to be a representative, and who did not serve in a supervisory capacity over such matter, shall not represent any party except The Florida Bar for 1 year after such service without the express consent of the board.~~

~~(c) Partners, Associates, Employers, or Employees of the Firms of Standing Committee Members, Circuit Committee Members, or Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar.~~ Members of the firms of board of governors members, standing committee members,

The rule as worded is cumbersome and difficult to follow. The Rules Committee requested that the Standing Committee on Unlicensed Practice of Law consider amending the rule. The amendment clarifies the rule in simpler language and conforms the rule to the Supreme Court of Florida Guidelines for Rules Submissions.

or circuit committee members shall not represent any party other than The Florida Bar in UPL proceedings authorized under these rules without the express consent of the board.

~~**(d) Partners, Associates, Employers, or Employees of the Firms of Former Standing Committee Members, Former Circuit Committee Members, or Former Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar.** Attorneys in the firms of former board of governors members, former standing committee members, or former circuit committee members shall not represent any party other than The Florida Bar in UPL proceedings authorized under these rules for 1 year after the former member's service without the express consent of the board.~~

**(a) Representation Prohibited.** Lawyers may not represent a party other than The Florida Bar in unlicensed practice of law proceedings authorized by these rules if they are:

- (1) currently serving on the standing committee, a circuit committee, or the board;
- (2) employees of The Florida Bar; or
- (3) former members of the standing committee, a circuit committee, the board and former employees of The Florida Bar if personally involved to any degree in the matter while a member of the standing committee, a circuit committee, the board or while an employee of The Florida Bar.

**(b) Representation Permitted With Consent by the Board of Governors.** Lawyers may represent a party other than The Florida Bar in unlicensed practice of law proceedings authorized by these rules only after receiving consent from the executive director or board of governors if they are:

- (1) former members of the standing committee, a circuit committee, the board, or former employees of The Florida Bar who did not participate personally

in any way in the matter or in any related matter in which the lawyer seeks to be a representative, and who did not serve in a supervisory capacity over the matter within 1 year of the service or employment;

(2) a partner, associate, employer or employee of a member of the standing committee, a circuit committee or the board; or

(3) a partner, associate, employer or employee of a former member of the standing committee, a circuit committee or the board within 1 year of the former member's service on the committee or board.

\* \* \*

## SUBCHAPTER 10-6 PROCEDURES FOR INVESTIGATION

\* \* \*

### RULE 10-6.3 RECOMMENDATIONS AND DISPOSITION OF COMPLAINTS

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

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

**(c) Review by Designated Reviewer.** ~~A designated reviewer shall review~~ All recommendations by the standing committee that litigation be initiated must be

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.

reviewed by a designated reviewer. ~~The~~ designated reviewer ~~shall~~ does not act on the recommendation within 21 days following the mailing date of the notice of standing committee action, ~~otherwise~~ the standing committee action ~~shall~~ will become final. If the designated reviewer disagrees with all or any part of the recommendation for litigation, the designated reviewer ~~shall~~ will make a report and recommendation to the board of governors and the board will make a final determination regarding the litigation.

\* \* \*

## SUBCHAPTER 10-9 ADVISORY OPINIONS

### RULE 10-9.1 PROCEDURES FOR ISSUANCE OF ADVISORY OPINIONS ON THE UNLICENSED PRACTICE OF LAW

#### (a) Definitions.

(1) *Committee.* The ~~committee is the~~ standing committee on UPL as constituted according to the directives contained in these rules.

(2) *Petitioner.* ~~An petitioner is an individual or organization seeking guidance as to the applicability, in a hypothetical situation, of the state's prohibitions against the unlicensed practice of law.~~

(3) *Public Notice.* ~~Publication~~Public notice is publication in a newspaper of general circulation in the county in which the hearing will be held and in The Florida Bar ~~News~~News.

(4) *Court.* The court is the Supreme Court of Florida (or ~~such~~any other court in the state of Florida as the supreme court may designate).

**(b) Requests for Advisory Opinions.** ~~A petitioner requesting a formal advisory opinion concerning activities that may constitute the unlicensed practice of law shall do so by sending the request in writing addressed to The UPL Department, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300. The request for an advisory opinion shall state in detail to the extent practicable the operative facts upon which the request for opinion is based and contain the name and address of the petitioner. A petitioner may request a formal advisory opinion concerning activity that may constitute the unlicensed practice of law by sending a question to The Florida Bar's UPL Department at the bar's headquarters address in Tallahassee. The question must be in writing, state all operative facts and ask whether the activity constitutes the unlicensed practice of law. The request shall will be reviewed by UPL staff counsel. If the request complies with the requirements of the this rule as stated herein, the~~

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



request will be placed on the agenda for the next scheduled meeting of the committee. At that meeting, the committee will determine whether to accept the request, ~~such determination being~~ which is within the discretion of the committee. ~~Should~~ If the committee accepts the request, a public hearing as provided ~~in rule 10-9.1(f)~~ shall ~~elsewhere in this rule will~~ be scheduled.

**(c) Limitations on Advisory Opinions.** No advisory opinion shall ~~may~~ be rendered with respect to any case or controversy pending in any court or tribunal in this jurisdiction or any matter currently the subject of an unlicensed practice of law or grievance investigation by The Florida Bar ~~and no informal opinion shall be issued except as provided in rule 10-9.1(g)(1)~~. However, the committee ~~shall~~ will hold a public hearing and issue a proposed formal advisory opinion under circumstances described by the court in *Harold-Goldberg v. Merrill Lynch Credit-Corporation Corp.*, 35 So. 3d 905 (Fla. 2010) when the petitioner is a party to a lawsuit and that suit has been stayed or dismissed without prejudice. No informal advisory opinion will be issued except as provided elsewhere in these rules.

**(d) Services of Voluntary Counsel.** The committee ~~shall be empowered to~~ may request and accept the voluntary services of a person licensed to practice in this state when the committee deems it advisable to receive written or oral advice regarding the question presented by the petitioner.

**(e) Conflict of Interest.** Committee members ~~shall~~ will not participate in any matter in which they have either a material pecuniary interest that would be affected by ~~a proposed~~ an advisory opinion or committee recommendation or any other conflict of interest that should prevent them from participating. However, no action of the committee will be invalid where full disclosure has been made and the committee has not decided that the member's participation was improper.

**(f) Notice, Appearance, and Service.**

(1) At least 30 days in advance of the committee meeting at which a hearing is to be held with respect to a potential advisory opinion, the committee ~~shall~~ must

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 court before comments may be filed. As the 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.

The bar has notified Thomson Reuters of a discrepancy between the bar's records and Thomson Reuters 2016 *Florida Rules of Court* in subdivision (c) of rule 10-9.1, in which the case name, "Harold Goldberg v. Merrill Lynch Credit Corporation" 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.

give public notice of the date, time, and place of the hearing, provide a general description of the subject matter of the request and the bar website and address where a full copy of the question presented can be obtained, and invite written comments on the question. On the announced date the committee ~~shall~~will hold a public hearing at which any person ~~affected shall be entitled to~~may present oral testimony and be represented by counsel. ~~Oral testimony by other persons may be allowed by the committee at its discretion.~~ At the time of or prior to the hearing any ~~other person shall be entitled to~~may file written testimony on the issue before the committee. Additional procedures not inconsistent with this rule may be adopted by the committee.

3d 66, 68 (Fla. 2012).

(2) ~~The committee shall~~After the hearing the committee will vote whether to issue either a written proposed advisory opinion, a letter that declines to issue an opinion, or an informal opinion as provided ~~in rule 10-9.1(g)(1) elsewhere in this rule.~~ No other form of communication ~~shall be~~is deemed to be an advisory opinion.

(3) A proposed advisory opinion ~~shall~~must be in writing and ~~shall~~ bear a date of issuance. ~~The proposed opinion shall prominently bear a title indicating cover page of the advisory opinion will state that it is a proposed advisory opinion, and a disclaimer stating that it is only an interpretation of the law and does not constitute final court action.~~ The committee ~~shall~~will arrange for the publication of notice of filing the proposed advisory opinion ~~and with a summary thereof in The Florida Bar News/News~~ within a reasonable time. Interested parties ~~shall~~will be furnished a copy of the full opinion ~~upon~~ request.

**(g) Service and Judicial Review of Proposed Advisory Opinions.**

(1) In the case of any proposed advisory opinion in which the standing committee concludes that the conduct in question is not the unlicensed practice of law, it ~~shall~~will decide, by a vote of a majority of the committee members present, either to publish the advisory opinion as provided ~~in rule 10-9.1(f)(3) elsewhere in this rule~~ as an informal advisory opinion, or to file a copy of the opinion with

the court as provided in rule 10-9.1(g)(2).

(2) In the case of any proposed advisory opinion in which the standing committee concludes that the conduct in question constitutes or would constitute the unlicensed practice of law, the committee ~~shall~~must file a copy of the opinion and all materials considered by the committee in adopting the opinion with the clerk of the court. The proposed advisory opinion, ~~together with~~and the notice of the filing thereof, ~~shall~~will be furnished by ~~certified mail~~ to the petitioner.

(3) Within 30 days of the filing of the proposed advisory opinion, the petitioner and any other interested party may file ~~objections and~~ a brief or memorandum ~~in support thereof, copies of which shall be served~~ in response to the proposed advisory opinion, copies of which must be served on the committee at the Florida Bar's headquarters address in Tallahassee. ~~Any other interested person may, within 30 days of the filing of the opinion, seek leave of the court to file and serve a brief, whether in support of or in opposition to the opinion, in accordance with this same procedure.~~ The committee may file a responsive brief or memorandum within 20 days of service of the initial brief or memorandum. The petitioner, ~~as well as~~and other interested persons ~~having leave of court~~, may file a reply brief or memorandum within 10 days of service of the responsive brief or memorandum. ~~At its discretion, the court shall~~The court may permit reasonable extension of these time periods. Oral argument will be allowed at the court's discretion. ~~The~~Filing, service and oral argument will be governed by the Florida Rules of Appellate Procedure ~~shall otherwise govern the above methods of filing, service, and argument.~~

(4) ~~Upon the expiration of the time to file objections, briefs, and replies thereto, the court shall review the advisory opinion, regardless of whether any such objections are in fact made, together with any briefs or objections filed in support of or in opposition to such opinion. Upon review, it shall~~The court will review all filings after which the court will approve, modify, or disapprove the proposed advisory opinion, and the ensuing. The court's opinion shall~~will~~ have the force and effect of an order of the court and be published accordingly. There

~~shall~~will be no further review of the opinion except as granted by the court in its discretion, ~~upon~~ petition to the court.

\* \* \*

**CHAPTER 12 EMERITUS ATTORNEYS PRO BONO PARTICIPATION PROGRAM**

**SUBCHAPTER 12-1 GENERALLY**

**RULE 12-1.1 PURPOSE**

Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for ~~such~~ these services. ~~As one means of meeting these legal needs, the following rules establishing the~~ The emeritus attorneys ~~lawyers~~ pro bono participation program ~~are adopted~~ is one means of meeting these legal needs.

The changes conform the rules to this Court's Guidelines for Rules Submissions.

## RULE 12-1.2 DEFINITIONS

**(a) Emeritus Attorney Lawyer.** An "emeritus ~~attorney~~lawyer" is any person; who meets the following eligibility and requirements.

(1) Eligibility. An emeritus lawyer must be a person who:

(A) is a member of The Florida Bar who is inactive or retired from the active practice of law in Florida;

(B) is an inactive or retired member of the bar of ~~or~~ any other state or territory of the United States or the District of Columbia, ~~or is an authorized house counsel certified by the Supreme Court of Florida and who;~~

(C) has served as a judge in Florida or any other state or territory of the United States or the District of Columbia;

(D) is or was a full-time law professor employed by a law school accredited by the American Bar Association; or

(E) is an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules.

(2) Requirements. All emeritus lawyers must meet the following requirements:

(A) not be currently engaged in the practice of law in Florida or elsewhere except for authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules;

(~~4~~B) washave been engaged in the active practice of law for a minimum of 10 out of the 15 years immediately preceding the application to participate in the emeritus program, except ~~that this requirement does not apply to~~for authorized house counsel certified by the Supreme Court of Florida under

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.

In subdivision (a)(1)(B), within the first phrase that is new language, "is an inactive or retired member..." the word "inactive" had mistakenly been "active" on board of governors approval, and was noted in the creation of this appendix and the change was made to "inactive."

chapter 17 of these rules;

(2C) ~~was~~have been a member in good standing of The Florida Bar or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(3D) ~~if not a retired member of The Florida Bar,~~has not failed the Florida bar examination 3 or more times except for an inactive or retired member of The Florida Bar;

(4E) agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(5F) neither asks for nor receives compensation of any kind for the legal services to be rendered under this rule; and

(6G) ~~is~~be certified under rule 12-1.5.

**(b) Approved Legal Aid Organization.** An "approved legal aid organization" for the purposes of this chapter is a not-for-profit legal aid organization that is approved by the Supreme Court of Florida. A legal aid organization seeking approval must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and reciting with specificity:

- (1) the structure of the organization and whether it accepts funds from its clients;
- (2) the major sources of funds used by the organization;
- (3) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(4) the types of legal and nonlegal services performed by the organization;

(5) the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization; and

(6) the existence and extent of malpractice insurance that will cover the emeritus ~~attorney~~lawyer.

**(c) Supervising ~~Attorney~~Lawyer.** A "supervising ~~attorney~~lawyer" as used in this chapter is a member in good standing of The Florida Bar who ~~directs and~~ supervises an emeritus ~~attorney~~lawyer engaged in activities permitted by this chapter. The supervising ~~attorney~~lawyer must:

(1) be employed by or be a participating volunteer for an approved legal aid organization; and

(2) assume ~~personal professional~~responsibilityconsistent with the requirements of rule 4-5.1 of the Rules Regulating The Florida Bar for supervising the conduct of the matter, litigation, or administrative proceeding in which the emeritus ~~attorney~~lawyer participates.

**(d) Inactive.** "Inactive" as used in this chapter refers to a lawyer who voluntarily elects to be placed on inactive status and was not placed on inactive status due to incapacity or discipline, or who is ineligible to practice law for failure to pay bar fees or complete continuing legal education requirements.

**(e) Active Practice of Law.** The "active practice of law" as used in this chapter includes, but is not limited to, private practice, working as an authorized house counsel, public employment including service as a judge, and full time employment as a law professor at or by an American Bar Association-accredited law school.



## RULE 12-1.3 ACTIVITIES

**(a) Permissible Activities.** An emeritus ~~attorney~~lawyer, in association with an approved legal aid organization and under the supervision of a supervising ~~attorney~~lawyer, may perform the following activities:

(1) The emeritus ~~attorney~~lawyer may appear and proceed in any court or before any administrative tribunal in this state on behalf of a client of an approved legal aid organization if the person on whose behalf the emeritus ~~attorney~~lawyer is appearing has consented in writing to that appearance and representation and a supervising ~~attorney~~lawyer has given written approval for that appearance. The written consent and approval must be filed in the record of each case and brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

(2) The emeritus ~~attorney~~lawyer may prepare, sign, and file pleadings and other documents to be filed in any court or before any administrative tribunal in this state in any matter in which the emeritus ~~attorney~~lawyer is involved. The supervising lawyer's name and Florida Bar number must be included on each pleading or paper filed or served by an emeritus lawyer, who must also be identified as a certified emeritus lawyer on each pleading or paper ~~must sign all documents filed with the court. The supervising lawyer is not required to sign each pleading or paper filed or served by an emeritus lawyer.~~

(3) The emeritus ~~attorney~~lawyer may engage in ~~such other preparatory~~ activities as are necessary for any matter in which the emeritus ~~attorney~~lawyer is involved, including participating in legal clinics sponsored or provided by the emeritus lawyer's legal aid organization, and providing advice and assistance to, and drafting legal documents for, persons whose legal problems or issues are not in litigation.

**(b) Determination of Nature of Participation.** The presiding judge or hearing officer may, in the judge's or officer's discretion, determine the extent of the emeritus

The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice to expand the pool of lawyers available to handle pro bono cases.

attorney's/lawyer's participation in any proceedings before the court.

**COMMENT**

This rule recognizes that an emeritus lawyer may accept an appointment or assignment from a state or federal judge seeking pro bono assistance for litigants or persons appearing before the judge through a supervising legal aid organization, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or guardian ad litem. However, this rule applies to civil legal assistance and recognizes that emeritus lawyers under this rule may not provide representation and or legal services in criminal law matters.

**RULE 12-1.4 SUPERVISION AND LIMITATIONS**

**(a) Supervision by AttorneyLawyer.** An emeritus attorneylawyer must perform all activities authorized by this chapter under the direct supervision of a supervising attorneylawyer.

**(b) Representation of Bar Membership Status.** Emeritus attorneyslawyers permitted to perform services are not, and must not represent themselves to be, active members of The Florida Bar licensed to practice law in this state.

**(c) Payment of Expenses and Award of Fees.** No emeritus lawyer may receive compensation for legal services rendered under the authority of this rule from any source, including but not limited to the legal aid organization with which the lawyer is associated, the emeritus lawyer's client, or a contingent fee agreement. The prohibition against compensation for the emeritus attorneylawyer contained in ~~rule 12-1.2(a)(5)~~this chapter will not prevent the approved legal aid organization from reimbursing the emeritus attorneylawyer for actual expenses incurred while rendering approved services. It also does not prevent the approved legal aid organization from charging for its services as it may properly charge. The approved legal aid organization will be entitled to receive all court-awarded attorneys' fees that may be awarded for any representation or services rendered by the emeritus attorneylawyer.

The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice to expand the pool of lawyers available to handle pro bono cases.

## **RULE 12-1.5 CERTIFICATION**

An emeritus ~~attorney~~lawyer seeking to provide pro bono legal services must obtain approval from the ~~Clerk~~clerk of the Supreme Court of Florida by filing all of the following certificates:

(a) a certificate from an approved legal aid organization stating that the emeritus ~~attorney~~lawyer is currently associated with that legal aid organization and that a Florida Bar member employed by or participating as a volunteer with that organization will assume the required duties of the supervising lawyer;

(b) a certificate from the highest court or agency in any state, territory, or district in which the emeritus ~~attorney~~lawyer has been licensed to practice law, certifying that the emeritus ~~attorney~~lawyer has ~~fulfilled the requirements of active bar membership and has not been disciplined for professional misconduct by the bar or courts of that jurisdiction within the past 15 years.~~ As, except that an authorized house counsel certified by the Supreme Court of Florida under chapter 17 of these rules need not provide this certificate; and

(c) a sworn statement by the emeritus ~~attorney~~lawyer that the emeritus ~~attorney~~lawyer:

(1) has read and will abide by the Rules of Professional ~~conduct~~Conduct as adopted by the Supreme Court of Florida;

(2) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes as ~~defined by provided in chapter 3, Rules of Discipline, of these rules and by rules 12-1.2(a)(4) and 12-1.7, R. Regulating Fla. Bar~~elsewhere in this chapter; and

(3) will neither ask for nor receive compensation of any kind for the legal services authorized by this rule.

The changes conform the rules to this Court's Guidelines for Rules Submissions.

## RULE 12-1.6 WITHDRAWAL OF CERTIFICATION

### (a) **Withdrawal of Permission to Perform Services.**

(1) The emeritus attorney lawyer must immediately cease performing legal services if: (1) the emeritus lawyer ceases to be associated with the approved legal aid organization. The approved legal aid organization must file a statement with the Clerk clerk of the Supreme Court of Florida within 5 days after the that: (A) the emeritus attorney has ceased to be associated with the organization. This notice must be filed within 5 days after such association has ceased; or The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus lawyer.

(2) (B) The emeritus lawyer must immediately cease performing legal services if the approved legal aid organization withdraws certification of such attorney the emeritus lawyer is withdrawn. An approved legal aid organization may withdraw certification, which may be at any time and it is not necessary that the notice state without stating the cause for such the withdrawal. The approved legal aid organization must file a statement with the clerk of the Supreme Court of Florida within 5 days after withdrawing the certification. The legal aid organization must mail a copy of the notice filed with the clerk of the Supreme Court of Florida to the emeritus attorney concerned; or lawyer.

(23) the The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida revokes permission for the emeritus lawyer to provide pro bono services, which is at the court's Supreme Court of Florida, in its discretion, at any time, revokes permission for the emeritus attorney to perform pro bono services. The Clerk clerk of the Supreme Court of Florida must mail a copy of the statement to the emeritus attorney lawyer and the approved legal aid organization.

(34) The emeritus lawyer must immediately cease performing legal services if the Supreme Court of Florida terminates the emeritus lawyer as an authorized

The changes are the result of recommendations made in the interim report of the Florida Commission on Access to Justice to expand the pool of lawyers available to handle pro bono cases.

house counsel. The Florida Bar must files a statement with the Supreme Court of Florida that the individual is no longer an authorized house counsel. The Florida Bar must mail a copy of the statement to the emeritus ~~attorney~~lawyer involved.

**(b) Notice of Withdrawal.** If an emeritus ~~attorney's~~lawyer's certification is withdrawn for any reason, the supervising ~~attorney~~lawyer must immediately file a notice of the withdrawal in the official file of each matter pending before any court or tribunal in which the emeritus ~~attorney~~lawyer was involved.

**RULE 12-1.7 DISCIPLINE**

The Supreme Court of Florida may impose appropriate proceedings and discipline under the Rules of Discipline or the Rules of Professional Conduct. In addition, the Supreme Court of Florida or the approved legal aid organization may, with or without cause, withdraw certification, ~~and the~~ The presiding judge or hearing officer ~~for any matter in which the emeritus attorney has participated~~ may hold the emeritus ~~attorney~~ lawyer in civil contempt for any failure to abide by the tribunal's orders for any matter in which the emeritus lawyer has participated.

\* \* \*

The changes conform the rules to this Court's Florida Guidelines for Rules Submissions.

**CHAPTER 15 REVIEW OF LAWYER ADVERTISEMENTS AND SOLICITATIONS**

\* \* \*

**SUBCHAPTER 15-2 STANDING COMMITTEE ON ADVERTISING**

**RULE 15-2.1 MEMBERSHIP AND TERMS**

The total number of standing committee on advertising members is determined at the discretion of the board of governors of a number of no more than 20, 3-5 of which are shall consist of 4 members of The Florida Bar and 3-nonlawyers representing the public. Members of the committee ~~shall be~~ appointed by the president-elect of The Florida Bar, as provided in rule 2-8.1. The president-elect ~~shall~~ designates the chair and vice-chair, with the advice and consent of the board of governors. Members of the committee ~~shall~~ serve staggered 3-year terms unless removed by the president or president-elect for non-attendance or other good cause. No member may serve more than 2 consecutive terms. A quorum ~~shall~~ consists of a majority of the members.

\* \* \*

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.



## CHAPTER 16 FOREIGN LEGAL CONSULTANCY RULE

### SUBCHAPTER 16-1

\* \* \*

#### RULE 16-1.2 DEFINITIONS GENERAL CERTIFICATION REGULATIONS

A foreign legal consultant is any person who: ~~The Supreme Court of Florida may certify to practice as a foreign legal consultant an applicant who:~~

~~(a) has been admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent for a period of not less than 5 of the 7 years immediately preceding the application for certification under this chapter~~ is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to the practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or public authority;

~~(b) has engaged in the practice of law of such a foreign country for a period of not less than 5 of the 7 years immediately preceding the application for certification under this chapter and has remained in good standing as an attorney, lawyer, counselor at law, or the equivalent throughout said that period;~~

~~(c) is admitted to practice in a foreign country whose professional disciplinary system for attorneys is generally consistent with that of The Florida Bar;~~

~~(d) has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within 4 of 7 years immediately preceding the application for certification under this chapter and is not the subject of any such disciplinary proceeding or investigation pending at the date of application for certification under this chapter;~~

~~(e) has not been denied admission to practice before the courts of any jurisdiction based upon character or fitness during the 15-year 10-year period~~

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

preceding application for certification under this chapter; and

~~(f) has submitted, pursuant to requirements determined by the Supreme Court of Florida, an application for certification under this chapter and the appropriate fees;~~

~~(g) agrees to abide by the applicable Rules Regulating The Florida Bar and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;~~

~~(h) is over 26 years of age;~~

~~(ie) maintains an office in the state of Florida for the rendering of services as a foreign legal consultant; and~~

~~(j) has satisfied, in all respects, the provisions of rule 16-1.4.~~

longer necessary.

**RULE 16-1.3 ACTIVITIES**

**(a) Rendering Legal Advice.** A person certified as a foreign legal consultant under this chapter may ~~render~~provide legal services in the state of Florida; ~~provided,~~ ~~however,~~ that such only when these services shall:

(1) ~~be~~are limited to those regarding the laws of the foreign country in which ~~such~~that person is admitted to practice as ~~an attorney~~a lawyer, counselor at law, or the equivalent;

(2) do not include any activity or any service constituting the practice of the laws of the United States, the state of Florida, or any other state, commonwealth, or territory of the United States or the District of Columbia including, but not limited to, the restrictions that ~~such~~the person ~~shall~~will not:

(A) appear for another person as ~~attorney~~a lawyer in any court or before any magistrate or other judicial officer or before any federal, state, county, or municipal governmental agency, quasi-judicial, or quasi-governmental authority in the state of Florida, or prepare pleadings or any other papers in any action or proceedings brought in any ~~such~~of these courts, or before any ~~such~~of these judicial officers, except as authorized in any rule of procedure relating to admission pro hac vice, or pursuant to administrative rule;

(B) prepare any deed, mortgage, assignment, discharge, lease, agreement of sale, or any other instrument affecting title to real property located in the United States, or personal property located in the United States, except where the instrument affecting title to such property is governed by the law of a jurisdiction in which the foreign legal consultant is admitted to practice as ~~an attorney~~a lawyer, counselor at law, or the equivalent;

(C) prepare any will or trust instrument affecting the disposition of any property located in the United States and owned by a United States resident ~~thereof~~ nor prepare any instrument relating to the administration of a

A lawyer certified as a foreign legal consultant is not a member of The Florida Bar and may not hold out as being a member of The Florida Bar. 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 members of The Florida Bar and there is no evidence that the disclosures provided any protection to the client.

decedent's estate in the United States;

(D) prepare any instrument ~~with respect to~~ regarding the marital relations, rights, or duties of a resident of the United States or the custody or care of the children of ~~such a~~ United States resident;

(E) ~~render professional~~ give legal advice on the law of the ~~State~~ state of Florida, the United States, or any other state, subdivision, commonwealth, or territory of the United States, or the District of Columbia (whether ~~rendered~~ incident to the preparation of a legal instrument or otherwise); or

(F) ~~render~~ provide any legal services without ~~utilizing~~ executing a written ~~retainer~~ agreement with the client that ~~shall specify~~ specifies in bold type that the foreign legal consultant is not admitted to practice law in the state of Florida nor licensed to advise on the laws of the United States or any other state, commonwealth, territory, or the District of Columbia, unless so licensed, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where ~~such~~ the person is admitted to practice as an ~~attorney~~ lawyer, counselor at law, or the equivalent.

~~**(b) Representing Status as Member of The Florida Bar.** Foreign legal consultants certified to render services under this chapter shall not represent that they are admitted to The Florida Bar or licensed as an attorney or foreign legal consultant in another state, commonwealth, territory, or the District of Columbia, or as an attorney, counselor at law, or the equivalent in a foreign country, unless so licensed. Persons certified under this chapter shall not use any title other than "Foreign Legal Consultant, Not Admitted to Practice Law in Florida," although such person's authorized title and firm name in the foreign country in which the person is admitted to practice as an attorney, counselor at law, or the equivalent may be used if the title, firm name, and the name of the foreign country are stated together with the above-mentioned designation.~~

~~Foreign legal consultants certified under this chapter must provide clients with a~~

~~letter disclosing the extent of professional liability insurance coverage maintained by the foreign legal consultant, if any, as well as an affirmative statement advising the client that any client aggrieved by the foreign legal consultant will not have access to the Clients' Security Fund of The Florida Bar. The letter must further include the list of activities that the foreign legal consultant certified under this chapter is prohibited from engaging in, as set out in rule 16-1.3(a)(2)(A)-(F).~~

A person certified as a foreign legal consultant may not in any way hold out as a member of or admitted to The Florida Bar. A person certified as a foreign legal consultant may not carry on a practice, or use in connection with the practice, any name, title or designation other than the following:

(1) the foreign legal consultant's own name;

(2) the name of the law firm with which the foreign legal consultant is affiliated; and

(3) the foreign legal consultant's authorized title in the foreign county where admitted to practice law, which may be used in conjunction with the name of that country.

The title foreign legal consultant must appear with the foreign legal consultant's name, must state "not a member of The Florida Bar" and may include "admitted to the practice of law in (name of foreign country of admission to practice.)"

**RULE 16-1.4 CERTIFICATION APPLICATION**

~~(a) Commencement of Permission to Perform Services.~~ Permission for a foreign legal consultant to render legal services under this chapter shall become effective upon the filing of an application and certification, with respect to an applicant, by the International Law Section of The Florida Bar, of the requirements of rules 16-1.2(a) through (j) and 16-1.3(a) and (b) herein. In addition to any other evidence that The Florida Bar, in its discretion, may require, the application shall include the filing and approval of:

~~(1) a duly authenticated certificate from the entity governing the practice of law in the foreign country in which the applicant is licensed to practice, which shall be accompanied by the official seal, if any, of such entity, and which shall certify:~~

~~(A) the entity's jurisdiction in such matters;~~

~~(B) the applicant's admission to practice in such foreign country and the date thereof;~~

~~(C) the applicant's good standing as an attorney, counselor at law, or the equivalent; and~~

~~(D) whether any charge or complaint has ever been filed against the applicant with such entity, and if so, the substance of each such charge or complaint and the adjudication or disposition thereof;~~

An applicant under this chapter must file an application with the International Law Section of The Florida Bar that must include:

(a) a certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted certifying the applicant's admission to practice, the date of admission, good standing as a lawyer or counselor at law or the equivalent and a duly

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 members of The Florida Bar. 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.

authenticated English translation of the certificate if it is not in English;

~~(2)(b)~~ a letter of recommendation signed by and with the official seal, if any, ~~off from~~ 1 of the members of the executive body of such ~~entity~~ the professional authority or public body or from 1 of the judges of the highest court of law of such ~~the~~ foreign country, ~~certifying to the applicant's professional qualifications and an~~ authenticated English translation of the letter if it is not in English;

~~(3)~~ a letter of recommendation from at least 2 attorneys, counselors at law, or the equivalent admitted in and practicing in such foreign country, setting forth the length of time, when, and under what circumstances they have known the applicant and their appraisal of the applicant's moral character;

~~(4)~~ a letter of recommendation from at least 2 members in good standing of The Florida Bar, setting forth the length of time, when, and under what circumstances they have known the applicant and their appraisal of the applicant's moral character;

~~(5)(c)~~ a sworn statement by the applicant that the applicant:

(A~~1~~) has read and is familiar with the Rules of Professional Conduct as adopted by the Supreme Court of Florida and will abide by, and be subject to, their provisions thereof;

(B~~2~~) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes, ~~as defined in chapter 3 of these rules and rule 16-1.6. The statement by the applicant must also authorize notification to the entity governing the practice of law in the foreign country in which the applicant is licensed to practice of any disciplinary action taken against the applicant in Florida; and~~

(C~~3~~) ~~shall~~ will comply with the requirements of the rule 16-1.3(b) regarding disclosure;

~~(6)(d)~~ a written commitment to notify ~~the court~~ The Florida Bar of any resignation

or revocation of the foreign legal consultant's admission to practice in the foreign country of admission, or in any other state or jurisdiction in which ~~said~~the consultant has been licensed as an ~~attorney~~lawyer, counselor at law, or equivalent or as a foreign legal consultant, or of any censure, suspension, or expulsion in respect of ~~such~~the admission; ~~and~~

~~(7)~~(e) a ~~duly acknowledged instrument~~notarized document setting forth the applicant's address within the state of Florida and designating the secretary of state as ~~such~~the person's agent upon whom process may be served; ~~pursuant to applicable Florida law, with like effect as if served personally upon such~~the applicant ~~pursuant to applicable Florida law,~~ in any action or proceeding ~~thereafter~~brought against the applicant arising out of or based upon any legal services ~~rendered~~offered or provided ~~or offered to be rendered by such~~the applicant within or to the residents of the state of Florida, whenever ~~after due diligence~~service cannot be made upon such~~the~~ applicant at ~~such~~the address after due diligence; and

(f) other evidence of the nature and extent of the applicant's educational and professional qualifications, good moral character, general fitness, and compliance with the general certification regulation set forth elsewhere in this chapter.

~~(b) Annual Sworn Statement.~~ A person certified under this chapter as a foreign legal consultant shall submit to The Florida Bar, on an annual basis, a sworn statement attesting to the foreign legal consultant's good standing as an attorney, counselor at law, or the equivalent in the foreign country in which such person is licensed to practice and shall also include with such statement an annual renewal fee equivalent to annual membership fees paid by members of The Florida Bar, in good standing, and such other evidence as The Florida Bar shall deem necessary to determine the continuing qualifications of the foreign legal consultant under this chapter.



**RULE 16-1.5 WITHDRAWAL OR TERMINATION OF CERTIFICATION**

Permission to perform services under this chapter ~~shall cease~~ immediately upon the earliest of the following events:

(a) ~~The~~the filing of a notice by the Supreme Court of Florida, ~~in its discretion, at any time,~~ stating that permission to perform services under this chapter has been revoked. ~~A, a copy of such notice shall~~which will be mailed by the clerk of the court to The Florida Bar and to the foreign legal consultant ~~involved. The, after which the~~ foreign legal consultant ~~shall have~~has 15 days to request reinstatement for good cause.;

(b) ~~The~~the foreign country in which the foreign legal consultant is admitted to practice discontinues having a professional disciplinary system for ~~attorneys~~lawyers that is generally consistent with that of The Florida Bar.; or

(c) ~~The~~the failure of the foreign legal consultant to comply with any applicable provisions of this chapter.

The changes conform the rules to this Court's Guidelines for Rules Submissions.

**RULE 16-1.6 DISCIPLINE**

**(a) Discipline by Florida Courts.** Each person ~~licensed~~certified to practice as a foreign legal consultant under this chapter is expressly subject to the Rules of Professional Conduct and ~~to continuing review of such consultant's qualifications to retain any license granted hereunder, and shall be subject to the disciplinary jurisdiction of the Supreme Court of Florida and the other courts of this state.~~

**(b) Withdrawal of Certification.** In addition to any appropriate proceedings and discipline that may be imposed by The Florida Bar or the Supreme Court of Florida under ~~chapter 3 of the Rules Regulating The Florida Bar, the Supreme Court of Florida may, at any time, with or without cause, withdraw certification hereunder.~~

~~(c) Notification of Other Jurisdictions. The Florida Bar shall be authorized to notify each entity governing the practice of law in the foreign country in which the foreign legal consultant is licensed to practice law of any disciplinary action taken against the foreign legal consultant.~~

The current rule has language authorizing The Florida 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.

**RULE 16-1.7 ANNUAL SWORN STATEMENT**

A person certified under this chapter as a foreign legal consultant must submit annually to The Florida Bar in the manner required by The Florida Bar:

(a) a sworn statement attesting to the foreign legal consultant's good standing as a lawyer, counselor at law, or the equivalent in the foreign country in which the person is licensed to practice; that the person intends to continue practicing as a foreign legal consultant in the state of Florida; that the person continues to meet all eligibility requirements under this chapter; that the person limits the person's practice to the activities permitted under this chapter; and that the person currently maintains an office in the state of Florida to provide legal services as a foreign legal consultant; and

(b) a renewal fee equivalent to annual membership fees paid by members of The Florida Bar eligible to practice law.

A lawyer certified as a foreign legal consultant must pay the annual renewal fee equal to that paid by active members of The Florida Bar 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.

## CHAPTER 17 AUTHORIZED HOUSE COUNSEL RULE

### SUBCHAPTER 17-1 GENERALLY

\* \* \*

#### RULE 17-1.2 DEFINITIONS

**(a) Authorized House Counsel.** An "authorized house counsel" is any person who:

(1) is either licensed to practice law in a United States jurisdiction other than Florida or admitted or otherwise authorized to practice as a lawyer or counselor of law or the equivalent in a foreign jurisdiction and subject to effective regulation and discipline by a duly constituted professional body or public authority or subject to recognized legal obligations pertaining to their status as lawyers;

~~(2) is exclusively employed by a business organization located in the state of Florida and is residing in Florida or relocating to the state of Florida in furtherance of such~~ for employment within 6 months of such ~~the application under this chapter and receives or shall will~~ receive compensation for activities performed for that business organization;

~~(23) has complied with rule 17-1.4~~ completed an application for certification as required elsewhere in this chapter; and

~~(34)~~ has been certified as an authorized house counsel by the Supreme Court of Florida.

**(b) Business Organization.** A "business organization" ~~for the purpose of this rule~~ is a corporation, partnership, association or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this state that is not itself engaged in the practice of law or the rendering of legal services outside ~~such of~~ the organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities

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.

comprising ~~such~~that organization by the activities of the authorized house counsel.  
For purposes of this rule, a A "business organization" does not include: ~~(1)~~ a governmental entity, governmental subdivision, political subdivision, or school board; ~~(2)~~ or any other entity that has the authority to levy a tax.

### **RULE 17-1.3 ACTIVITIES**

**(a) Authorized Activities.** An authorized house counsel, ~~as an employee of a business organization,~~ may provide legal services in the state of Florida solely to the employing business organization for which a registration is effective. ~~Such activities are limited to which certification is applicable but may only engage in the following activities:~~

(1) ~~the giving of legal advice to the directors, officers, employees, and agents of the business organization with respect to regarding its business and affairs;~~

(2) negotiating and documenting all matters for the business organization;  
~~and~~

(3) representation of the business organization in its dealings with any administrative agency or commission having jurisdiction; ~~provided however, authorized house counsel may not make appearances as counsel in any court, administrative tribunal, agency, or commission situated in the state of Florida unless the rules governing such court or body authorize the appearance, or the attorney is specially admitted by such court or body in a case; and~~

(4) providing pro bono legal services under chapter 12 of these rules if certified as an emeritus ~~attorney~~lawyer.

**(b) Disclosure.** In any communication with individuals or organizations outside of the business organization, authorized house counsel must disclose that they are not licensed to practice law in the state of Florida. If the communication is in writing, authorized house counsel must disclose in writing the name of the business organization, their title or function, and that they are not licensed to practice law in the state of Florida. ~~For example, the disclosure may state "J. Doe, XYZ Corporation, Authorized House Counsel, member .....(name of other state bar)..... only or not a member of The Florida Bar." In performing activities under this subdivision, authorized~~ Authorized house counsel may not represent themselves as members of

Within subdivision (a)(3), deleted language was moved to (c) within this rule.

Within subdivision (b) of 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 member of The Florida Bar. Within subdivision (b), staff made an editorial correction to add "s" to the word "individuals" for parallel construction

The Florida Bar or licensed to practice law in this state.

**(c) Limitation on Representation.** In no event will permitted activities include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice unless otherwise permitted or authorized by law, code, or rule or allowed by subdivision (a) of this rule or the appearance as counsel in any court, administrative tribunal, agency or commission situated in Florida unless the rules governing the court or body authorize the appearance or the lawyer is specially admitted by the court or body in the case.

**(d) Opinions to Third Parties.** An authorized house counsel may not express or render a legal judgment or opinion other than when representing the authorized house counsel's employer.

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), but which was not approved by the Board of Governors or noticed in the official notice in the September 1, 2016 Florida Bar News.

**RULE 17-1.4 REGISTRATION CERTIFICATION**

**(a) Filing with The Florida Bar.** The following ~~shall~~must be filed with The Florida Bar by an individual seeking to be certified as authorized house counsel:

(1) ~~A certificate from an entity governing the practice of law in all United States jurisdictions in which the registrant is licensed to practice law certifying that the registrant is in active status and is a member in good standing; or is in inactive status. If in inactive status, the certificate must certify that the registrant is in voluntary inactive status and was not placed on inactive status involuntarily. If available, the registrant must provide a certificate of good standing in addition to the certificate regarding the registrant's inactive status documentation or a certificate from all applicable United States and foreign jurisdictions proving that the registrant meets the requirements of rule 17-1.2(a)(1) and if the lawyer is in inactive status, the documentation or certification must certify that the lawyer is in voluntary inactive status and was not placed on inactive status involuntarily.~~

(2) a sworn statement by the registrant that the registrant:

(A) has read and is familiar with chapters 4 and 17 of the Rules Regulating The Florida Bar ~~as adopted by the Supreme Court of Florida and will abide by the its provisions thereof;~~

(B) submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; as defined in chapter 3 of the Rules Regulating The Florida Bar and ~~this chapter~~rule 17-1.6 herein, and authorizes notification to or from the entity governing the practice of law of each state, territory, or the District of Columbia in which the registrant is licensed to practice law of any disciplinary action taken against the registrant; and

(C) is not subject to a disciplinary proceeding or outstanding order of reprimand, censure, or disbarment, permanent or temporary, for professional misconduct by the bar or courts or duly constituted organization overseeing

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. This authorization requires changes to the application process to ensure that the proper documentation is provided.



the profession or granting authority to practice law of any jurisdiction and has not been permanently denied admission to practice before the bar or duly constituted organization overseeing the profession or granting authority to practice law of any jurisdiction based upon such the person's character or fitness; and

(D) authorizes notification of any disciplinary or other action taken against the registrant to or from the disciplinary authority or duly constituted organization overseeing the profession or which granted authority to practice law in all United States and foreign jurisdictions where the applicant is licensed or otherwise authorized to practice law.

(3) a certificate from a business organization certifying that: ~~it is qualified as set forth in subdivision (b) of rule 17-1.2; that it meets the definition of a~~ business organization as defined elsewhere in this chapter, that it is aware that the registrant is not licensed to practice in Florida; and it is not relying upon The Florida Bar in any manner in employing the authorized house counsel;

(4) ~~an appropriate registration application to The Florida Bar as promulgated by the executive director of The Florida Bar; and~~

(5) ~~an appropriate remittance of a filing fee prescribed and set by the executive director of The Florida Bar in an amount not to exceed the amount applicable for admission to the bar examination for an attorney a lawyer licensed in a state other than Florida.~~

**(b) Review by The Florida Bar.** ~~Upon receipt of the items set forth in subdivision (a) of this rule, The Florida Bar shall review the items will review applications for compliance with this chapter. Any application not meeting the requirements of this chapter shall be sent back to the applicant.~~

**(c) Certification by Court.** ~~Upon review of the application by The Florida Bar, The Florida Bar shall file with the clerk of the Supreme Court of Florida the name and~~

~~address of those registrants complying with the provisions of subdivision (a) of this rule along with a request that the registrant be certified as authorized house counsel. Permission for authorized house counsel to perform services under this rule shall become effective upon approval of the request for certification by the clerk of the Supreme Court of Florida for a person employed in Florida or, if the registrant is not yet in Florida, the effective date of employment but not later than 6 months from the filing of the items set forth above. The Florida Bar will submit the name and address of all registrants meeting the requirements of this rule to the clerk of the Supreme Court of Florida with a request that the registrant be certified as authorized house counsel. If the registrant is employed in Florida, authorization to perform services under this rule becomes effective on the date the clerk of the Supreme Court of Florida approves the request for certification. If the registrant is relocating to Florida, the authorization becomes effective on the date of employment in Florida, which must be within 6 months of the date of the application.~~

~~**(d) Annual Renewal.** The registration pursuant to this section shall be annual in a manner consistent with that applicable to an attorney licensed to practice in the state of Florida including the annual fee therefor as if such authorized house counsel was so licensed, provided, however, such renewal shall include a statement that the registrant, if on active status, is in good standing in all states or United States territories in which licensed and is not subject to any disciplinary proceedings. The certification under this chapter is annual. The authorized house counsel must pay an annual fee that is the same fee paid by active members of The Florida Bar and provide any information the bar requires during the time set by the bar.~~

~~**(e) Duty to Update.** An authorized house counsel must report any change in their license status or authority to practice in another applicable United States or foreign jurisdiction within 30 days of the effective date of the change in status. Should If an individual certified as an authorized house counsel chooses inactive status in 1 or more United States jurisdictions any jurisdiction after certification, the authorized house counsel shall must provide a certificate documentation as required by subdivision (a)(1) of this rule. Failure to provide notice or documentation by the authorized house counsel is a basis for discipline pursuant to the Rules Regulating The~~

Florida Bar.

**RULE 17-1.5 TERMINATION OR WITHDRAWAL OF  
REGISTRATION CERTIFICATION**

**(a) Cessation of Authorization to Perform Services.** Authorization to perform services under this rule shall ~~ceases~~ upon the earliest of the following events:

(1) ~~the termination or resignation of employment with the business organization for which registration has been filed, provided, however, that if the authorized house counsel shall commence employment with another business organization within 30 days of the termination or resignation, authorization to perform services under this rule shall continue upon the filing with The Florida Bar of a certificate as set forth in subdivision (a)(3) of rule 17-1.4 where the authorized house counsel was employed at the time of certification; however, if the authorized house counsel begins employment with another business organization within 30 days of the termination or resignation and that business organization provides the certificate required for certification, the authorization to perform services under this chapter will continue;~~

(2) ~~the withdrawal of registration request~~ by the business organization that the certification be withdrawn;

(3) ~~the withdrawal of registration request~~ by the authorized house counsel that the certification be withdrawn;

(4) ~~the relocation of an authorized house counsel outside of Florida for a period greater than 180 days;~~

(5) disbarment or suspension from the practice of law, revocation of the authority to practice law, or involuntary placement on inactive status, by a court or other authorized disciplinary agency of another state or foreign jurisdiction by a duly constituted organization overseeing the profession or having the ability to grant the authority to practice law or by a federal court; or

(6) ~~the failure of authorized house counsel to comply with any applicable~~

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.

provision of this rule.

**(b) Notice to The Florida Bar by the Authorized House Counsel.** Notice of 1 of the events set forth in ~~subdivision (a)(1)-(4)~~ of this rule or a new certificate as provided in ~~subdivision (a)(1)~~ of this rule must be filed with The Florida Bar by the authorized house counsel within 30 days after ~~such action~~ the event. ~~An authorized house counsel disbarred or suspended from the practice of law, or involuntarily placed on inactive status, by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of disbarment, or suspension, or involuntary placement on inactive status, file with The Florida Bar a copy of the order or judgment effecting such status. Failure to provide notice by the authorized house counsel shall be a basis for discipline pursuant to the Rules Regulating The Florida Bar.~~

**(bc) Notice of Termination of Authorization.** ~~Upon receipt of the notice required by subdivision (a) of this rule, The Florida Bar shall forward a request to the clerk of the Supreme Court of Florida that the authorization under this chapter be terminated. Notice of the termination shall be mailed by the clerk of the Supreme Court of Florida to The Florida Bar. The Florida Bar shall mail notice of the termination~~ The Florida Bar will request that the clerk of the Supreme Court of Florida terminate the authorization under this chapter after The Florida Bar has received the notice required by subsection (a) of this rule. The Florida Bar will mail notice of the termination issued by the clerk to the authorized house counsel and to the business organization employing the authorized house counsel.

**(ed) Reapplication.** ~~Nothing herein shall prevent an individual previously authorized as house counsel to reapply for authorization as set forth in rule 17-1.4. An individual previously certified as an authorized house counsel may reapply for certification as long as the requirements of this chapter are met.~~

**(e) Recertification.** Individuals whose authorized house counsel status was terminated for failure to pay annual fees or complete continuing legal education or basic skills course requirements may be recertified in the same manner that delinquent

Within subdivision (e) Reapplication, authorized house counsels are currently treated as members of The Florida Bar for disciplinary purposes, and like members,

members of The Florida Bar are reinstated, as provided elsewhere in these rules.

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 Florida 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 \$1600 application fee. 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 the jurisdiction of this Court.

**RULE 17-1.6 DISCIPLINE**

**(a) Termination of Authorization by Court.** ~~In addition to any appropriate proceedings and discipline that may be imposed by The Florida Bar or the Supreme Court of Florida under chapter 3 of the Rules Regulating The Florida Bar, the~~The Supreme Court of Florida may, at any time, with cause, temporarily or permanently terminate an authorized house counsel's registration certification, temporarily or permanently with cause at any time, in addition to any other proceeding or discipline that may be imposed by the Supreme Court of Florida under chapter 3 of these rules.

**(b) Notification to Other States.** The Florida Bar shall be authorized to notify each entity governing the practice of law in the state, territory, or the District of Columbia in which the authorized house counsel is licensed to practice law of any disciplinary action against the authorized house counsel.

Amendments conform the terminology used in this rule to the terminology change made in other rules in this chapter and conform the rules to this Court's Guidelines for Rules Submissions.

**~~RULE 17-1.7 IMMUNITY FROM PROSECUTION~~**

~~An authorized house counsel who has been duly registered under this rule shall not be subject to prosecution for the unlicensed practice of law for acting as counsel to a business organization prior to the effective date of this rule.~~

\* \* \*

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 also requested in the petition filed with this Court that, if adopted, that this Court give immunity to foreign authorized house counsel in its order for a specified time period. 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.



## CHAPTER 20 FLORIDA REGISTERED PARALEGAL PROGRAM

### SUBCHAPTER 20-1 PREAMBLE

#### RULE 20-1.1 PURPOSE

The purpose of this chapter is to set forth a definition that must be met in order to use the title paralegal, to establish the requirements to become a Florida Registered Paralegal, and to establish the requirements to maintain Florida Registered Paralegal status. This chapter is not intended to set forth the duties that a paralegal may perform because those restrictions are set forth in the Rules of Professional Conduct and various opinions of the Professional Ethics Committee. Nothing contained herein shall be deemed in this rule is deemed relevant in charging or awarding fees for legal services rendered by nonlawyers under the supervision of an member of The Florida Bar employing or supervising lawyer, such fees which are being based on the nature of the services rendered and not the title of the person rendering the services.

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).

In only the bar *News* notice, the chapter and subchapter numbers titles were shown as deleted text, which was an error that the bar *News* software program added for the notice only. As approved by the Board of Governors, the chapter and subchapter numbers and titles were not deleted.

**SUBCHAPTER 20-2 DEFINITIONS**

**RULE 20-2.1 GENERALLY**

For purposes of this chapter, the following terms have the following meaning:

**(a) Paralegal.** A paralegal is a person with education, training, or work experience, who works under the direction and supervision of ~~an member of The Florida Bar~~ employing or supervising lawyer and who performs specifically delegated substantive legal work for which ~~an member of The Florida Bar~~ employing or supervising lawyer is responsible.

**(b) Florida Registered Paralegal.** [no change]

**(c) Paralegal Work and Paralegal Work Experience.** Paralegal work and paralegal work experience are specifically delegated substantive legal work that is performed by a person with education, training, or work experience under the direction and supervision of ~~an member of The Florida Bar for which a member of The Florida Bar~~ employing or supervising lawyer for which an employing or supervising lawyer is responsible. In order to qualify as paralegal work or paralegal work experience for purposes of meeting the eligibility and renewal requirements, the paralegal must primarily perform paralegal work and the work must be continuous and recent. Recent paralegal work for the purposes of meeting the eligibility and renewal requirements means work performed during the previous 5 years in connection with an initial registration, and during the preceding year in the case of a registration renewal. Time spent performing clerical work is specifically excluded.

**(d) Approved Paralegal Program.** An approved paralegal program is a program approved by the American Bar Association (ABA) or a program that is in substantial compliance with the ABA guidelines by being an institutional member of the American Association for Paralegal Education (AAfPE) and accredited by a nationally recognized accrediting agency approved by the United States Department

By expanding the definition of employing or supervising lawyers to include other lawyers that are regulated by The Florida 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. Justification for amendment.

of Education.

**(e) Employing or Supervising Lawyer.** An employing or supervising lawyer is ~~the lawyer~~ a member of The Florida Bar, authorized house counsel, foreign legal consultant, or military lawyer, as defined by the Rules Regulating The Florida Bar, having direct supervision over the work product of the paralegal or Florida Registered Paralegal.

**(f) Board.** [no change]

**(g) Respondent.** [no change]

**(h) Designated Reviewer.** [no change]

**(i) Probable Cause.** [no change]

**(j) Bar Counsel.** [no change]

\* \* \*