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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 1-3.7 REINSTATEMENT TO MEMBERSHIP

(a) Eligibility for Reinstatement. [no change

(b) Petitions Required. [no change]

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

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

(e) Members Who Have Permanently Retired. [no change]

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

(g) Inactive Members. Inactive members may be reinstated to <u>active</u> membership in good standing <u>to become eligible to practice law in Florida</u> by petition filed with the executive director, in the form and as provided in (b) above, except:

(1) If the member has been inactive for greater than 5 years, has been authorized to practice law in another jurisdiction, and either actively practiced law in that jurisdiction or held a position that requires a license as a lawyer for the entire period of time, the member will be required to complete the Florida Law Update continuing legal education course as part of continuing legal education requirements.

(2) If the member has been inactive for greater than 5 years and does not meet the requirements of subdivision (1), the member will be required to

This amendment was requested by an inactive bar member to allow an inactive member to be considered a member in good standing. In Florida, "inactive" is "not in good standing." Inactive members in some states cannot be admitted as authorized house counsel or admitted to practice in the other jurisdiction 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

complete the basic skills course requirement and the 30-hour continuing legal education requirement. (3) An inactive member is not eligible for reinstatement until all applicable continuing legal education requirements have been completed and the remaining portion of membership fees for members in good standing for the current fiscal year have been paid. * * *	"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, they will remain ineligible to practice law in Florida, and this clarifies that reinstatement is to membership in which they are eligible to practice law.

CHAPTER 2 BYLAWS OF THE FLORIDA BAR
*** * ***
SUBCHAPTER 2-3 BOARD OF GOVERNORS
*** * ***
BYLAW 2-3.10 MEETINGS

The board of governors ~~shall~~will hold 6 regular meetings each year, at least 1 of which ~~shall~~will be held ~~at The Florida Bar Center~~in Tallahassee. ~~Subject to the approval of the board of governors, the places and times of such meetings shall be determined by the~~The president~~-~~elect selects the places and times of the meetings to be held during the president-elect's term as president, ~~who may make such designation while president-elect~~, subject to the approval of the board of governors. Special meetings ~~shall~~will be held at the direction of the executive committee or the board of governors. Any member of The Florida Bar in good standing may attend meetings at any time except ~~during such times as the~~when the board ~~shall be~~is in executive session concerning disciplinary matters, personnel matters, member objections to legislative positions of The Florida Bar, or receiving attorney-client advice. Minutes of all meetings ~~shall~~will be kept by the executive director.

*** * ***

The Board of Governors holds 1 meeting per year in Tallahassee. The bar's headquarters buildings have no space that is large enough to host the Board of Governors and its guests for its Tallahassee meeting.

SUBCHAPTER 2-9 POLICIES AND RULES
*** * ***

RULE BYLAW 2-9.8 ~~LAW OFFICE MANAGEMENT ASSISTANCE SERVICE~~PRACTICE RESOURCE INSTITUTE

The board of governors ~~hereby~~ creates the ~~law office management assistance service~~Practice Resource Institute and ~~shall~~will adopt standing board policies, as provided in bylaw 2-9.2, that ~~shall~~ govern the operation of the ~~service~~institute.

*** * ***

The Law Office Management Assistance Service has been totally restructured as a result of a program evaluation and recommendations by the Program Evaluation Committee and Board of Governors. The new program and Florida bar department are now called "The Florida Bar Practice Resource Institute." The Special Committee on Technology/Office Tools & Resources was tasked with restructuring and overhauling the Law Office Management Assistance Service program which included a mandate to come up with a new name and retire the Law Office Management Assistance Service name. Survey results demonstrated that the Law Office Management Assistance Service name and perception of the Law Office Management Assistance Service program had become tired, dated, and negative, or that the vast majority of the bar membership had no knowledge of the program because it really was not memorable, marketable, or 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 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.

CHAPTER 3 RULES OF DISCIPLINE
*** * ***
SUBCHAPTER 3-3 JURISDICTION TO ENFORCE RULES

RULE 3-3.1 SUPREME COURT OF FLORIDA; DISCIPLINARY AGENCIES

The exclusive jurisdiction of the Supreme Court of Florida over the discipline of persons admitted to the practice of law ~~shall~~will be administered in the following manner subject to the supervision and review of the court. The following entities are ~~hereby~~ designated as agencies of the Supreme Court of Florida for this purpose ~~and~~ with the following responsibilities, jurisdiction, and powers. The board of governors, grievance committees, and referees ~~shall~~ have ~~such~~the jurisdiction and powers ~~as are~~ necessary to conduct the proper and speedy disposition of any investigation or cause, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Each member of ~~such~~these agencies has the power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the agency.

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

RULE 3-3.2 BOARD OF GOVERNORS OF THE FLORIDA BAR **(a)Responsibility of Board.** The board is assigned the responsibility of maintaining high ethical standards among the members of The Florida Bar. The board ~~shall~~will supervise and conduct disciplinary proceedings in accordance with the provisions of these rules. **(b) Authority to File a Formal Complaint.** No formal complaint ~~shall~~may be filed by The Florida Bar in disciplinary proceedings against a member of the bar unless 1 of the following conditions has been met: (1) *Finding of Probable Cause.* [no change] A formal complaint may be filed if there has been a finding under these rules that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action; (2) *Emergency Suspension or Probation.* A formal complaint may be filed if the member is the subject of an order of emergency suspension or emergency probation that is based on the same misconduct that is the subject matter of the formal complaint; (3) *Felony Determination or Adjudication.* A formal complaint may be filed if the respondent has been determined or adjudged to be guilty of the commission of a felony; (4) *Discipline In Another Jurisdiction.* A formal complaint may be filed if the respondent has been disciplined by another entity having jurisdiction over the practice of law; (5) *Felony Charges.* A formal complaint may be filed if a member has been charged with commission of a felony under applicable law that warrants the imposition of discipline and if the chair of the grievance committee agrees. A decision of the grievance committee chair to not file a formal complaint ~~shall~~must be reviewed by the full grievance committee. The grievance committee may affirm or reverse the decision.	The changes conform the rules to this Court's Guidelines for Rules Submissions.

(6) *Discipline on Action of the Florida Judicial Qualifications Commission.* A formal complaint may be filed if the Supreme Court of Florida has adjudged the respondent guilty of judicial misconduct in an action brought by the Florida Judicial Qualifications Commission, the respondent is no longer a judicial officer, and the facts warrant imposing disciplinary sanctions.

(c) Executive Committee. All acts and discretion required by the board under these Rules of Discipline may be exercised by its executive committee between meetings of the board as may from time to time be authorized by standing board of governors' policies.

* * *

RULE 3-3.4 GRIEVANCE COMMITTEES

~~There shall be such~~The board will appoint grievance committees as ~~are herein~~ provided~~,~~ in this rule. E~~e~~ach ~~of which shall have~~grievance committee has the authority and jurisdiction required to perform the functions ~~hereinafter~~ assigned to it~~,~~ ~~and~~ which ~~shall be constituted and appointed~~are as follows:

(a) Circuit Grievance Committees. ~~There shall be~~The board will appoint at least 1 grievance committee for each judicial circuit of this state and as many more as ~~shall be found desirable by~~ the board chooses. ~~Such~~These committees ~~shall~~will be designated as judicial circuit grievance committees, and in circuits having more than 1 committee they ~~shall~~will be identified by alphabetical designation in the order of creation. ~~Such~~These committees ~~shall~~will be continuing bodies notwithstanding changes in membership, and they ~~shall~~will have jurisdiction and the power to proceed in all matters properly before them.

(b) Special Grievance Committees. The board may ~~from time to time~~ appoint grievance committees for the purpose of ~~such~~ investigations or specific tasks~~as may be~~ assigned in accordance with these rules. ~~Such~~These committees ~~shall~~will continue only until the completion of tasks assigned, and they ~~shall~~will have jurisdiction and power to proceed in all matters ~~so~~ assigned to them. All provisions concerning grievance committees ~~shall be applicable~~apply to special grievance committees except those concerning terms of office and other restrictions ~~thereon as may be~~ imposed by the board. Any vacancies occurring in such a committee ~~shall~~will be filled by the board, and ~~such~~any changes in members ~~shall~~will not affect the jurisdiction and power of the committee to proceed in all matters properly before it.

(c) Membership, Appointment, and Eligibility. Each grievance committee ~~shall~~will be appointed by the board and ~~shall~~must ~~consist of not fewer than~~have at least 3 members. At least one-third of the committee members ~~shall~~must be nonlawyers. All appointees ~~shall~~must be of legal age and, except for special grievance committees, ~~shall~~must be residents of the circuit or have their principal office in the circuit. The lawyer members of the committee ~~shall~~must have been

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

members of The Florida Bar for at least 5 years.

~~No~~A member of a grievance committee ~~shall~~must not perform any grievance committee function when that member:

(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 the above prohibitions, the affected members should recuse themselves from further proceedings. The grievance committee chair ~~shall have~~has the power to disqualify any member from any proceeding in which any of the above prohibitions exist and are stated orally ~~of~~on the record or memorialized in writing ~~in the file~~ by the chair.

(d) Terms. The terms of the members ~~shall be~~are for 1 year from the date of administration of the oath of service on the grievance committee or until ~~such time as~~ their successors are appointed and qualified. Continuous service of a member ~~shall~~may not exceed 3 years. A member ~~shall~~may not be reappointed for a period of 3 years after the end of the member's term; ~~provided, however~~but, the expiration of ~~the term of any~~ a member's term of service ~~shall~~does not disqualify ~~such~~the member from concluding any investigation or participating in disposition of cases that were pending before the committee when the member's term expired. A member who continues to serve on the grievance committee under the authority of this subdivision ~~shall~~is not ~~be~~ counted as a member of the committee when calculating the minimum number of public members required by this rule.

(e) Officers. The~~re shall be~~ designated reviewer of the committee will designate a chair and vice-chair who~~designated by the designated reviewer of that~~

committee. The chair and vice-chair shallmust be members of The Florida Bar.

(f) Oath. Each new member of a committee shallmust subscribe to an oath to fulfill the duties of the office. SuchThese oaths shallwill be filed with the executive director and placed with the official records of The Florida Bar.

(g) Removal. The designated reviewer of a grievance committee or the board of governors may remove Aany member of a grievance committeemay be removed from office. by the designated reviewer of that committee or the board.

(h) Grievance Committee Meetings. Grievance committees should meet at regularly scheduled times, not less frequently than quarterly each yearat least once every 3 months, and either the chair or vice-chair may call special meetings. Grievance committees should meet at least monthly during any period when the committee has 1 or more pending cases assigned for investigation and report. The time, date, and place of regular monthly meetings should be set in advance by agreement between the committee and chief branch discipline counsel.

RULE 3-3.5 CIRCUIT COURT JURISDICTION The jurisdiction of the circuit courts ~~shall be~~is concurrent with that of The Florida Bar under these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter ~~shall~~ retains ~~the same~~ jurisdiction to the exclusion of the other forum until the final determination of the cause.	The changes conform the rules to this Court's Guidelines for Rules Submissions.

SUBCHAPTER 3-4 STANDARDS OF CONDUCT
*** * ***
RULE 3-4.3 MISCONDUCT AND MINOR MISCONDUCT

The standards of professional conduct ~~to be observed by~~required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration ~~herein~~ of certain categories of misconduct as constituting grounds for discipline ~~shall~~are not ~~be deemed to be~~ all-inclusive, nor ~~shall~~is the failure to specify any particular act of misconduct to be construed as tolerance ~~thereof~~of such an act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice~~,~~ may constitute a cause for discipline whether the act is committed in the course of the ~~attorney's~~lawyer's relations as a~~n attorney~~lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether ~~or not~~ the act is a felony or a misdemeanor~~., may constitute a cause for discipline~~.

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

RULE 3-4.4 CRIMINAL MISCONDUCT ~~Unless modified or stayed by the Supreme Court of Florida as provided elsewhere herein, a~~A determination or judgment ~~of guilt of a member of The Florida Bar~~ by a court of competent jurisdiction that a member of The Florida Bar is guilty of any crime or offense that is a felony under the laws of ~~such~~that court's jurisdiction is cause for automatic suspension from the practice of law in Florida, unless the judgment or order is modified or stayed by the Supreme Court of Florida, as provided in these rules. ~~In addition, whether the alleged misconduct constitutes a felony or misdemeanor~~ The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for ~~the~~an alleged criminal misdemeanor or felony offense~~;~~. ~~however, the~~ The board may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the respondent. ~~The acquittal of the respondent~~If a respondent is acquitted in a criminal proceeding that acquittal ~~shall~~is not ~~necessarily be~~ a bar to disciplinary proceedings. Likewise,~~nor shall~~ the findings, judgment, or decree of any court in civil proceedings is not necessarily ~~be~~ binding in disciplinary proceedings. *** * ***	The changes conform the rules to this Court's Guidelines for Rules Submissions.

RULE 3-4.6 DISCIPLINE BY FOREIGN OR FEDERAL JURISDICTION; CHOICE OF LAW

~~(a)~~**(a) Disciplinary Authority.** A~~n attorney~~lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the ~~attorney's~~lawyer's conduct occurs. A~~n attorney~~lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that a~~n attorney~~lawyer licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action ~~shall~~will be considered as conclusive proof of ~~such~~the misconduct in a disciplinary proceeding under this rule.

~~(b)~~**(b) Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied ~~shall be~~are as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the ~~attorney's~~lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction ~~shall~~will be applied to the conduct.

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

Regarding subdivisions (a) and (b), when adopted, the letter of the subdivision was not bolded in *In re Amendments to the Rules Regulating the Florida Bar & The Florida Rules of Judicial Admin.,* 907 So. 2d 1138 (Fla. 2005). This technical error was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006.

RULE 3-4.7 OATH Violation of the oath taken by a~~n attorney~~lawyer to support the constitutions of the United States and the State of Florida is ground for disciplinary action. Membership in, alliance with, or support of any organization, group, or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state ~~shall be~~is a violation of the oath.	The changes conform the rules to this Court's Guidelines for Rules Submissions.

SUBCHAPTER 3-5 TYPES OF DISCIPLINE
*** * ***
RULE 3-5.4 PUBLICATION OF DISCIPLINE

(a) Nature of Sanctions. [no change]

(b) Disclosure on Inquiry. All public disciplinary sanctions ~~shall~~will be disclosed ~~up~~on inquiry.

(c) Manner of Publication. Unless otherwise directed by the court, and subject to the exceptions set forth below, all public disciplinary sanctions may be published for public information in print or electronic media.

(d) Limited Exception for Admonishments Issued by the Supreme Court of Florida. All admonishments issued by the court containing the heading "Not to be Published" ~~shall~~will not be published in the official court reporter and ~~shall~~will not be published in ~~*The Florida Bar*~~The Florida Bar *News*.

"Not to be Published" does not have the same meaning as "confidential." The Florida Bar may post information regarding specific orders of admonishment on the ~~Bar's~~bar's website. Further, ~~the~~The Florida Bar may provide information regarding an admonishment ~~up~~on inquiry.

COMMENT

All disciplinary sanctions as defined in rules 3-5.1 and 3-5.2, or their predecessors, entered in cases opened on or after March 17, 1990 are public information. Therefore, an inquiry into the conduct of a member of the bar will result in a disclosure of all ~~such~~these sanctions.

The public policy of this state is to provide reasonable means of access to public information. In furtherance of this policy, this rule is enacted so that all persons may understand what public information concerning lawyer disciplinary sanctions is available and in what format. This rule does not alter current court procedure or other

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

When adopted, the entire phrase "Florida Bar *News"* was italicized instead of just the word "News" in subdivision (d) and the third paragraph of the comment. *In re Amendments to the Rules Regulating the Florida Bar*, 24 So. 3d 63 (Fla. 2009). This discrepancy was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006. This change makes the terminology consistent in the Rules Regulating the Florida Bar.

Within rule 3-5.4, when adopted, the "bar's" in the second sentence of the second paragraph was capitalized instead of lower case. *In re Amendments to the Rules Regulating the Florida Bar*, 24 So. 3d 63 (Fla. 2009). This discrepancy was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006.

requirements. Admonishments are issued for minor misconduct and are the lowest form of disciplinary sanction. An admonishment is often issued for technical rule violations or for rule violations that did not result in harm. The court's orders imposing admonishments contain the heading "Not to be Published" and this rule directs that those admonishments not be published in *Southern Reporter* and directs The Florida Bar not to publish those admonishments in its newspaper, ~~*The Florida Bar*~~The Florida Bar *News.* The court does so in order to maintain a tangible difference between the sanctions of admonishment and public reprimand. This rule does not bar disclosure of admonishments ~~upon~~in response to an inquiry, whether written, oral, or electronic, and does not bar publication of admonishments on any website of The Florida Bar.	When adopted, the entire phrase "Florida Bar *News* was italicized instead of just the word "News" in subdivision (d) and the third paragraph of the comment. *In re Amendments to the Rules Regulating the Florida Bar*, 24 So. 3d 63 (Fla. 2009). This discrepancy was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006. This change makes terminology consistent in the Rules Regulating The Florida Bar.

SUBCHAPTER 3-7 PROCEDURES
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RULE 3-7.17 VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a)Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process, including ~~such as~~ the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies.

(b) Authority of the Court. ~~Only t~~The Supreme Court of Florida has the sole authority to enter an order under the provisions of this rule.

(c) Procedure.

(1) *Commencement.* Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual~~(s)~~ engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct.

(2) *Order To Show Cause.* The court, acting on its own motion, or on the recommendation of the referee or petition of the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order ~~shall~~will be served on the referee (if one has been appointed), the respondent, and The Florida Bar.

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

(3) *Response to Order to Show Cause.* The individual~~(s)~~ alleged to have engaged in vexatious conduct ~~shall have~~has 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, ~~shall be~~is deemed a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response ~~shall~~must be served on a referee, ~~(~~if one has been appointed~~)~~, the respondent, and The Florida Bar.

(4) *Reply.* The referee, ~~(~~if one has been appointed~~)~~, the respondent, and The Florida Bar ~~shall~~ have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided~~,~~ without good cause~~, shall~~ prohibits a reply.

(5) *Referral to Referee.* The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under this subdivision ~~shall~~will be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules.

(d) Court Order.

(1) *Rejection of Communications.* [no change]

(2) *Denial of Physical Access.* [no change]

(3) *Prohibition of or Limitation on Filings.* [no change]

(e) Violation of Order. Violation of an order issued under this rule ~~shall~~will be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar.

COMMENT

This rule is enacted to address circumstances involving repetitive conduct of the

type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system~~,~~ ~~resources that~~which must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, "every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *In re McDonald,* 489 U.S. 180, 184 (1989).

This concept has also been recognized in bar disciplinary proceedings by the Supreme Court of Florida when the court stated: "Kandekore's actions create a drain on the Court's limited time, for with each filing the Court has, as it must, reviewed and considered repetitious and meritless arguments. Therefore, we conclude that a limitation on Kandekore's ability to file repeated challenges to his long-final sanctions would further the constitutional right of access because it would permit this Court to devote its finite resources to the consideration of legitimate claims filed by others." *The Florida Bar re~~:~~ Kandekore,* 932 So.2d 1005, 1006 (Fla. 2006). Kandekore engaged in vexatious conduct after the court entered an order of disbarment.

The Supreme Court of Florida has also limited the ability of a lawyer to file further pleadings while that lawyer' s disciplinary case(s) were in active litigation. *The Florida Bar v. Thompson,* 979 So.2d 917 (Fla. 2008).

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT
*** * ***
SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP
*** * ***
RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. [no change]

(b) Factors to Be Considered in Determining Reasonable Fees and Costs. [no change]

(c) Consideration of All Factors. [no change]

(d) Enforceability of Fee Contracts. [no change]

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client and Definitions. [no change]

(f) Contingent Fees. As to contingent fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action,

claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

(3) A lawyer shall not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(B) a contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements:

(A) The contract shall contain the following provisions:

(i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented

by the undersigned attorney(s)."

(ii) "This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client."

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to $1 million; plus

2. 30% of any portion of the recovery between $1 million and $2 million; plus

3. 20% of any portion of the recovery exceeding $2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for

such action, through the entry of judgment:

1. 40% of any recovery up to $1 million; plus

2. 30% of any portion of the recovery between $1 million and $2 million; plus

3. 20% of any portion of the recovery exceeding $2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to $1 million; plus

2. 20% of any portion of the recovery between $1 million and $2 million; plus

3. 15% of any portion of the recovery exceeding $2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain ~~an attorney~~a lawyer of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if ~~such~~that court will not accept jurisdiction for the fee ~~division~~approval, the circuit court ~~wherein~~in which the cause of action arose, for approval of any fee contract between the client and ~~an attorney~~a lawyer of the client's choosing. ~~Such authorization shall~~Authorization will be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of ~~such a~~the

This corrects an editorial error made when the amendments to the rule were adopted in *In re: Amendments to the Rules Regulating The Florida Bar,* 718 So. 2d 1179 (Fla. 1998), as the current rule mistakenly refers to fee division as opposed to approval of a fee that exceeds the contingent fee schedule.

contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings ~~thereon~~on the petition may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision ~~shall~~must contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition ~~shall~~must be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract ~~shall~~does not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii) a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability whereby the compensation is dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall provide the language of article I, section 26 of the Florida Constitution to the client in writing and shall orally inform the client that:

a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

b. If a lawyer chooses not to accept the representation of a client under the terms of article I, section 26 of the Florida Constitution, the lawyer shall advise the client, both orally and in writing of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the

representation under the terms of article I, section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent.

c. If any client desires to waive any rights under article I, section 26 of the Florida Constitution, in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer shall provide each client a copy of the written waiver and shall afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, shall be given to each client to retain, and the lawyer shall keep a copy in the lawyer's file pertaining to the client. The waiver shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4-1.5(f)(5).

WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I, SECTION 26 OF THE FLORIDA CONSTITUTION

On November 2, 2004 voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution

Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

The undersigned client understands and acknowledges that (initial each provision):

_____ I have been advised that signing this waiver releases an important constitutional right; and

_____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

_____ By signing this waiver I agree to an **increase in the attorney fee** that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rule Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to $1 million; plus 20% to 30% of any portion of the recovery between $1 million and $2 million; plus 15% to 20% of any recovery exceeding $2 million; and

_____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and

_____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT

The undersigned client hereby acknowledges, under oath, the following:

I have read and understand this entire waiver of my rights under the constitutional provision set forth above.

I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof.

I have entered into and signed this waiver freely and voluntarily.

I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide this waiver to the court for its consideration without my presence.

Dated this _____ day of _____, ____.

By: _____

CLIENT

Sworn to and subscribed before me this _____ day of _____, _____ by _____, who is personally known to me, or has produced the following identification: _____.

By: _____

Notary Public

My Commission Expires:

Dated this _____ day of _____, ____.

By: _____

ATTORNEY

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is

necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to

the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is in proportion to the services performed by each lawyer; or

(2) by written agreement with the client:

(A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and

(B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.

(h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan.

(i) Arbitration Clauses. A lawyer shall not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

STATEMENT OF CLIENT'S RIGHTS

FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with 1 lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the

3-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount

recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, 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 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee

arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

Client Signature _____

Date _____

Attorney Signature_____

Date _____

COMMENT

Bases or rate of fees and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house

costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Lawyers should also be mindful of any statutory, constitutional, or other requirements or restrictions on attorneys' fees.

In order to avoid misunderstandings concerning the nature of legal fees, written documentation is required when any aspect of the fee is nonrefundable. A written contract provides a method to resolve misunderstandings and to protect the lawyer in the event of continued misunderstanding. Rule 4-1.5 (e) does not require the client to sign a written document memorializing the terms of the fee. A letter from the lawyer to the client setting forth the basis or rate of the fee and the intent of the parties in regard to the nonrefundable nature of the fee is sufficient to meet the requirements of this rule.

All legal fees and contracts for legal fees are subject to the requirements of the Rules Regulating The Florida Bar. In particular, the test for reasonableness of legal fees found in rule 4-1.5(b) applies to all types of legal fees and contracts related to them.

Terms of payment

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See rule 4-1.16(d). A lawyer is not, however, required to return retainers that, pursuant to an agreement with a client, are not refundable. A nonrefundable retainer or nonrefundable flat fee is the property of the lawyer and should not be held in trust. If a client gives the lawyer a negotiable instrument that

represents both an advance on costs plus either a nonrefundable retainer or a nonrefundable flat fee, the entire amount should be deposited into the lawyer's trust account, then the portion representing the earned nonrefundable retainer or nonrefundable flat fee should be withdrawn within a reasonable time. An advance fee must be held in trust until it is earned. Nonrefundable fees are, as all fees, subject to the prohibition against excessive fees.

A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Prohibited contingent fees

Subdivision (f)(3)(A) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in

connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar.

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part noncontingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the noncontingent portion of the fee agreement. An attorney could properly charge and retain the noncontingent portion of the fee even if the matter was not successfully prosecuted or if the noncontingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned noncontingent fees. Thus, under such a contract a lawyer may demand or collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in

rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

Upon a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract.

The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5(f)(4)(B)(iii) is added to acknowledge the provisions of Article ~~I~~I,

Section 26 of the Florida Constitution, and to create an affirmative obligation on the part of an attorney contemplating a contingency fee contract to notify a potential client with a medical liability claim of the limitations provided in that constitutional provision. This addition to the rule is adopted prior to any judicial interpretation of the meaning or scope of the constitutional provision and this rule is not intended to make any substantive interpretation of the meaning or scope of that provision. The rule also provides that a client who wishes to waive the rights of the constitutional provision, as those rights may relate to attorney's fees, must do so in the form contained in the rule. Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client. Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees. **Division of fee** A division of fee is a single billing to a client covering the fee of 2 or more lawyers who are not in the same firm. A division of fee facilitates association of more than 1 lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Subject to the provisions of subdivision (f)(4)(D), subdivision (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and	The change from the Arabic 1 to Roman numeral I is a correction of a technical error that existed at the time the rule was adopted. This discrepancy was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006. In Thomson Reuters' *Florida Rules of Court*, there is a space between "4-1.5" and "(f)(4)(B)(iii)" which was not in this Court's order adopting this provision in *In re: Amendment to the Rules Regulating the Florida Bar – Rule 4-1.5(f)(4)(B) of the*

does not object. It does require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in rule 4-5.1 for purposes of the matter involved.

Disputes over fees

Since the fee arbitration rule (chapter 14) has been established by the bar to provide a procedure for resolution of fee disputes, the lawyer should conscientiously consider submitting to it. Where law prescribes a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages, the lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Referral fees and practices

A secondary lawyer shall not be entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that allowed by the limitation.

The provisions of rule 4-1.5(f)(4)(D)(iii) only apply where the participating lawyers have for purposes of the specific case established a co-counsel relationship. The need for court approval of a referral fee arrangement under rule 4-1.5(f)(4)(D)(iii) should only occur in a small percentage of cases arising under rule 4-1.5(f)(4) and usually occurs prior to the commencement of litigation or at the onset of the representation. However, in those cases in which litigation has been commenced or the representation has already begun, approval of the fee division should be sought within a reasonable period of time after the need for court approval of the fee division arises.

In determining if a co-counsel relationship exists, the court should look to see if

Rules of Professional Conduct, Case No. SC05-1150, 939 So. 2d 1032 (Fla. 2006).

the lawyers have established a special partnership agreement for the purpose of the specific case or matter. If such an agreement does exist, it must provide for a sharing of services or responsibility and the fee division is based upon a division of the services to be rendered or the responsibility assumed. It is contemplated that a co-counsel situation would exist where a division of responsibility is based upon, but not limited to, the following: (a) based upon geographic considerations, the lawyers agree to divide the legal work, responsibility, and representation in a convenient fashion. Such a situation would occur when different aspects of a case must be handled in different locations; (b) where the lawyers agree to divide the legal work and representation based upon their particular expertise in the substantive areas of law involved in the litigation; or (c) where the lawyers agree to divide the legal work and representation along established lines of division, such as liability and damages, causation and damages, or other similar factors.

The trial court's responsibility when reviewing an application for authorization of a fee division under rule 4-1.5(f)(4)(D)(iii) is to determine if a co-counsel relationship exists in that particular case. If the court determines a co-counsel relationship exists and authorizes the fee division requested, the court does not have any responsibility to review or approve the specific amount of the fee division agreed upon by the lawyers and the client.

Rule 4-1.5(f)(4)(D)(iv) applies to the situation where appellate counsel is retained during the trial of the case to assist with the appeal of the case. The percentages set forth in subdivision (f)(4)(D) are to be applicable after appellate counsel's fee is established. However, the effect should not be to impose an unreasonable fee on the client.

Credit ~~Plans~~<u>plans</u>

Credit plans include credit cards. If a lawyer accepts payment from a credit plan for an advance of fees and costs, the amount must be held in trust in accordance with chapter 5, Rules Regulating The Florida Bar, and the lawyer must add the lawyer's own money to the trust account in an amount equal to the amount charged by the

credit plan for doing business with the credit plan. * * *	The word "plans" in the commentary header was capitalized instead of lower case when originally adopted in *Amendment to the Rules Regulating The Florida Bar,* 875 So. 2d 448, 497 (Fla. 2004). This technical error was discovered after Board of Governors approval and publication in the bar *News* and is being added per staff's discretionary authority granted by this Court to correct editorial errors in administrative order AOSC06-14, dated June 14, 2006.

SUBCHAPTER 4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

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RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) Reporting Misconduct of Judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information;

(1) otherwise protected by rule 4-1.6;

(2) gained by a lawyer while serving as a mediator or mediation participant if the information is privileged or confidential under applicable law; or

(3) gained by a lawyer or judge while participating in an approved lawyers assistance program unless the lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction, in which case a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency.

(d) Limited Exception for ~~LOMAS~~Practice Resource Institute Counsel. A lawyer employed by or acting on behalf of the ~~Law Office Management Assistance Service (LOMAS)~~Practice Resource Institute ~~shall not have an~~is exempt from the obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer's fitness to practice~~,~~ if the lawyer employed by or acting on behalf of ~~LOMAS~~the Practice

The Law Office Management Assistance Service Law Office Management Assistance Service has been totally restructured as a result of a program

Resource Institute acquired the knowledge while engaged in ~~a LOMAS review of the other lawyer's practice~~the course of the lawyer's regular job duties as a Practice Resource Institute employee. ~~Provided further, however, that if the LOMAS review is conducted as a part of a disciplinary sanction this limitation shall not be applicable and a report shall be made to the appropriate disciplinary agency.~~

COMMENT

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of rule 4-1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Generally, Florida statutes provide that information gained through a "mediation communication" is privileged and confidential, including information which discloses professional misconduct occurring outside the mediation. However, professional misconduct occurring during the mediation is not privileged or confidential under

evaluation and recommendations by the Program Evaluation Committee and Board of Governors. The new program and 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 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

Florida statutes. Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law. * * *	legal or ethics advice.

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

SUBCHAPTER 6-10 CONTINUING LEGAL EDUCATION REQUIREMENT RULE

RULE 6-10.1 CONTINUING LEGAL EDUCATION REQUIREMENT

(a) Preamble. It is of primary importance to the public and to the members of The Florida Bar that ~~attorneys~~lawyers continue their legal education throughout the period of their active practice of law. To accomplish that objective, each member of The Florida Bar (~~hereinafter~~ referred to below as "member") ~~shall~~must meet ~~certain~~ minimum requirements for continuing legal education.

(b) Reporting Requirement. Each member except those exempt under rule 6-10.3(c)~~(4) and (5)~~ ~~shall~~must report compliance with continuing legal education requirements in the manner set forth in the policies adopted for administration of this plan. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of rule 6-10.3. Members described in subdivisions (c)(4) through (c)(6) of rule 6-10.3 are automatically exempt from compliance and reporting of continuing legal education.

Changes clarify which members automatically qualify for continuing legal education exemption and which must apply and be approved for the exemption.

(c) Fees. The board of governors of The Florida Bar may require a reasonable fee to be paid to The Florida Bar in connection with each member's report concerning compliance with continuing legal education requirements.

(d) Rules. The board of legal specialization and education of The Florida Bar ~~shall~~ adopts policies necessary to implement continuing legal education requirements subject to the approval of the board of governors.

*** * ***

RULE 6-10.4 REPORTING REQUIREMENTS **(a) Reports Required.** Each member except those exempt under rule 6-10.3(c)~~(4) and (5)~~ ~~shall~~must file a report showing compliance or noncompliance with the continuing legal education requirement~~. Such report shall be~~ in the form prescribed by the board of legal specialization and education. Members must apply for and receive approval by the bar of an exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of rule 6-10.3. Members described in subdivisions (c)(4) through (c)(6) of rule 6-10.3 are automatically exempt from compliance and reporting of continuing legal education. **(b) Time for Filing.** The report ~~shall~~must be filed with The Florida Bar no later than the last day of ~~such~~the member's applicable reporting period as assigned by The Florida Bar. *** * ***	Changes clarify which members automatically qualify for continuing legal education exemption and which must apply and be approved for the exemption.

RULE 6-10.7 CONFIDENTIALITY ~~Unless directed otherwise by the Supreme Court of Florida, the~~The files, records, and proceedings of the board of legal specialization and education, ~~as they~~ related to or ~~arise out of~~arising from any failure of a member to satisfy the continuing legal education requirements, ~~shall be deemed~~are confidential and ~~shall~~may not be disclosed, except in the furtherance of the duties of the board of legal specialization and education or ~~upon~~ the written request of the member~~, in writing,~~ or as ~~they may be~~ introduced in ~~the~~ evidence or otherwise produced in proceedings under these rules, unless directed otherwise by the Supreme Court of Florida. Nothing ~~herein~~in this rule ~~shall be construed to~~ prohibits The Florida Bar from advising that a member is not eligible ~~to~~has been ~~suspended from the active~~ practice ~~of~~ law for failure to meet continuing legal education requirements. * * *	The amendments make terminology within the Rules Regulating the Florida Bar consistent with other changes and better describe the status of a lawyer who has not met continuing legal education requirements.

CHAPTER 8 LAWYER REFERRAL RULE
*** * ***
SUBCHAPTER 8-2 REQUIREMENTS
*** * ***
RULE 8-2.2 CONTENTS OF APPLICATION

An application by a local bar association to the Board of Governors of The Florida Bar for authority to operate a lawyer referral service ~~shall~~must be in writing ~~and shall be~~ filed with the executive director. ~~Such~~The application ~~shall~~must contain the following:

(a) Statement of Benefits. A statement of the benefits to the public to be achieved by the implementation of the lawyer referral service.

(b) Proof of Nonprofit Status. Proof that the referral service is established and operated by a nonprofit organization exempt from federal taxation under section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986.

(c) Submission and Content of Bylaws. The proposed bylaws or rules and regulations that will govern the lawyer referral service. The proposed bylaws ~~shall~~must include the following regulations:

(1) All members of the proposed referral service ~~shall~~must provide proof of professional liability insurance in the minimum amount of $100,000 unless the proposed lawyer referral service itself carries professional liability insurance in an amount not less than $100,000 per claim or occurrence.

(2) The proposed lawyer referral service ~~shall~~will accept membership applications only from attorneys who maintain an office in the geographic area served by the proposed lawyer referral service.

(3) The proposed lawyer referral service ~~shall~~ agree~~s~~ to maintain an alphabetical member list, updated quarterly, with The Florida Bar. In turn, The Florida Bar ~~shall~~will notify the service of any unresolved finding of probable

cause against a member. When probable cause has been found at the local grievance committee level, and the lawyer referral service has been notified, ~~such~~the service ~~shall be required to~~must hold referral to the member in question until the matter is resolved. If the member is in good standing with The Florida Bar and eligible to practice law in Florida after the resolution of the matter, then the member may be returned to the service. **(d) Estimated Number of Panel Members.** The estimated number of lawyers who will participate in the service. **(e) Number of Local Lawyers.** The number of lawyers in the area. **(f) Statement of Need.** A statement of the condition that evidences a need for ~~such~~the service in the area. **(g) Geographic Operational Area.** The geographic area in which the proposed referral service will operate. **(h) Statement of Operation.** A statement of how the lawyer referral service will be conducted. **(i) Statement of Fees.** A statement of fees to be charged by the lawyer referral service, including, but not limited to, fees charged by the referral service to members of the public using ~~such~~the service and fees charged by the referral service or remitted to the referral service by member ~~attorneys~~lawyers. **(j) Statement of No Discrimination.** A statement that ~~such~~the lawyer referral service will be open for referral to the members of the public without regard to race, sex, national origin, or economic status. **(k) Statement of No Discrimination in Local Bar Membership.** A statement that the local bar association is representative of the profession in the area of the service and is open to all members of the profession on an equal basis. *** * ***	The amendment clarifies that lawyer referral services connected to a local bar association in Florida may only reinstate participants who are members in good standing and eligible to practice law in Florida after a disciplinary action, as lawyers who are not eligible to practice law in Florida should not be permitted to receive referrals as participants in a lawyer referral service connected to a local bar association in Florida.

SUBCHAPTER 8-5 IMMUNITY

* * *

RULE 8-5.1 GENERALLY

The ~~members of The Florida Bar Lawyer Referral Service Committee and the~~ staff of The Florida Bar Lawyer Referral Service, as well as local bar associations with a lawyer referral service approved under rule 8-2.1, including their directors, officers, lawyer referral service committees, and staff, ~~shall~~ have absolute immunity from civil liability for all acts in the course of their official duties in furtherance of this chapter.

* * *

Amendments delete references to the Lawyer Referral Service Committee, as the committee no longer exists.

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

* * *

SUBCHAPTER 10-5 COMPLAINT PROCESSING AND INITIAL INVESTIGATORY PROCEDURES

* * *

RULE 10-5.1 COMPLAINT PROCESSING

(a)Complaints. All complaints alleging unlicensed practice of law, except those initiated by The Florida Bar, ~~shall~~must be in writing and signed by the complainant.~~ The complaint shall~~ and contain a statement providing that:

Under penalties of perjury, I declare that I have read the foregoing document and that to the best of my knowledge and belief the facts stated in it are true.

(b) Review by Bar Counsel. ~~Bar counsel shall review the complaint and~~The complaint will be reviewed by bar counsel who will determine whether the alleged conduct, if proven, would constitute a violation of the prohibition against engaging in the unlicensed practice of law. Bar counsel may conduct a preliminary, informal investigation to aid in this determination and, if necessary, may employ a Florida bar staff investigator to aid in the preliminary investigation. If bar counsel determines that the facts, if proven, would not constitute a violation, bar counsel may decline to pursue the complaint. A decision by bar counsel not to pursue a complaint ~~shall~~will not preclude further action or review under the Rules Regulating The Florida Bar. The complainant ~~shall~~will be notified of a decision not to pursue a complaint ~~and shall be given the reasons therefor~~including the reasons for not pursing the complaint.

(c)Referral to Circuit Committee. Bar counsel may refer a UPL file to ~~the appropriate~~a circuit committee for further investigation or action as authorized elsewhere in these rules.

The rule currently requires that a case be assigned to "the appropriate" circuit committee for investigation. As there is no venue requirement in the rules, the words "the appropriate" are not necessary and may lead to confusion.

(d) Closing by Bar Counsel and Committee Chair. If bar counsel and a circuit committee chair concur in a finding that the case should be closed without a finding of unlicensed practice of law, the complaint may be closed on such finding without

reference to the circuit committee or standing committee.

(e) Referral to Bar Counsel for Opening. A complaint received by a circuit committee or standing committee member directly from a complainant ~~shall~~will be reported to bar counsel for docketing and assignment of a case number. ~~Should~~If the circuit committee or standing committee member decides that the facts, if proven, would not constitute a violation of the unlicensed practice of law, the circuit committee or standing committee member ~~shall~~will forward this finding to bar counsel along with the complaint for notification to the complainant as outlined above. Formal investigation by a circuit committee may proceed after the matter has been referred to bar counsel for docketing.

* * *

CHAPTER 11 RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM

SUBCHAPTER 11-1 GENERALLY

*** * ***

RULE 11-1.7 SUPERVISION

The member of the bar under whose supervision an eligible law student does any of the things permitted by this chapter ~~shall~~must:

(a) be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing and eligible to practice law in Florida;

(b) be a lawyer employed by a state attorney, public defender, an approved legal aid organization, a state officer, or a governmental entity enumerated in rule 11-1.2(d)~~.~~;

(c) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and

(d) assist the student in the student's preparation to the extent the supervising lawyer considers it necessary.

*** * ***

The amendment adds the requirement that lawyers who supervise certified legal interns must be eligible to practice law in Florida. The amendment provides additional protection to clients who are represented by certified legal interns by requiring that those who supervise certified legal interns be eligible to practice law in Florida.

RULE 11-1.10 CERTIFICATION OF MEMBERS OF OUT-OF-STATE BARS

(a) Persons Authorized to Appear. A member of an out-of-state bar may practice law in Florida pursuant to this chapter if:

(1) the appearance is made as an employee of the attorney general, a state attorney, a public defender, or the capital collateral representative; and

(2) the member of an out-of-state bar has made application for admission to The Florida Bar; and

(3) the member of an out-of-state bar submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(4) the member of an out-of-state bar is in good standing with that bar, is eligible to practice law in that jurisdiction, and is not currently the subject of disciplinary proceedings.

(b) Term of Certification. The maximum term of certification under this section ~~shall be~~is 12 months from the date of certification; provided, however, that the certification may extend beyond 12 months if the certificate holder has passed the Florida bar examination and is awaiting the results of the character and fitness evaluation of the Florida Board of Bar Examiners. Certification may be withdrawn in the same manner as provided for the withdrawal of certification by a law school dean.

(c) Termination of Certification. Failure to take the next available Florida bar examination, failure of any portion of the Florida bar examination, or denial of admission to The Florida Bar ~~shall t~~erminates certification ~~hereunder~~under this rule.

* * *

This amendment adds the requirement that members in good standing also be eligible to practice law to rules addressing lawyers who are admitted to jurisdictions other than Florida who apply to become certified to appear in Florida courts while employed by the state attorney, public defender, or attorney general's office. This requirement provides the additional protection to the public that persons certified be eligible to practice law in their home state.

CHAPTER 13 AUTHORIZED LEGAL AID PRACTITIONERS RULE

SUBCHAPTER 13-1 GENERALLY
*** * ***
RULE 13-1.2 DEFINITIONS

(a)Authorized Legal Aid Practitioner. An "authorized legal aid practitioner" is any person who:

(1) was engaged in the active practice of law for 3 years immediately preceding the application for certification under this chapter;

(2) is a member in good standing of the entity governing the practice of law of any other state or territory or the District of Columbia, eligible to practice law in that jurisdiction -and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past 15 years;

(3) has not failed the Florida bar examination and has not been denied admission to the courts of any jurisdiction during the preceding 15 years;

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

(5) neither asks for nor receives compensation of any kind from the person on whose behalf the practitioner renders legal services ~~hereunder~~under this chapter (this shall not prevent the approved legal aid organization from paying compensation to the attorney); and

(6) is certified under rule 13-1.5.

(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 as set forth herein. A legal aid organization seeking approval from the Supreme Court of Florida for the purposes of

The amendment in subdivision (a)(2) adds the requirement that members in good standing also be eligible to practice law to rules addressing lawyers who are admitted to jurisdictions other than Florida who authorized legal aid practitioners. This requirement provides the additional protection to the public that out of state lawyers who become authorized legal aid practitioners be eligible to practice law in their home state. The amendment in subdivision (c) adds the requirement that Florida bar members who supervise out of state lawyers as authorized legal aid practitioners are eligible to practice law in Florida to further protect the public. A lawyer who supervises an authorized legal aid practitioner in Florida should be eligible to practice law in Florida in order to properly supervise the authorized legal aid

this chapter ~~shall~~must file a petition with the clerk of the Supreme Court of Florida certifying that it is a not-for-profit organization and stating 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 authorized legal aid practitioner. **(c) Supervising Attorney.** A "supervising attorney" as used ~~herein~~in this chapter is a member in good standing of The Florida Bar who is eligible to practice law in Florida and who directs and supervises an authorized legal aid practitioner engaged in activities permitted by this chapter. The supervising attorney must: (1) be employed by or be a participating volunteer for an approved legal aid organization; and (2) assume personal professional responsibility for supervising the conduct of the matter, litigation, or administrative proceeding in which the authorized legal aid practitioner participates. * * *	practitioner.