

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES CASE NO. SC16-
REGULATING THE FLORIDA BAR –
BIENNIAL RULES 11-1.3 AND 11-1.9
PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

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

Jurisdictional Statement

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

Organization of Petitions

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

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This petition includes only changes to rules 11-1.3 and 11-1.9, which require more of this Court's consideration and reflection and for which the bar seeks oral argument.

Organization of Amendments

The bar proposes amendments to rules 11-1.3 and 11-1.9 of the Rules Regulating the Florida Bar regarding certified legal interns. This section provides information regarding development of these rules proposals as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*. Each entry provides the following information: an explanation of each amendment; the reasons for each recommended change; the sources of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the Board of Governors; and dissenting votes noted within the Board of Governors action.

Amendments

CHAPTER 11 RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM

SUBCHAPTER 11-1 GENERALLY

RULE 11-1.3 REQUIREMENTS AND LIMITATIONS

Explanation: Maintains requirement that a law student register with the Florida Board of Bar Examiners as a certified legal intern registrant, allows a law student to be certified as a legal intern after passing a Level 2 background investigation, moves the language regarding the fee to a separate subsection, other subsections are renumbered.

Reasons: Acting as a certified legal intern is a valuable part of law school. In order to be certified by this Court as a certified legal intern, the law student must first receive a letter of clearance as to character and fitness from the Florida Board of Bar Examiners. According to the Florida Board of Bar Examiners, at the time the board considered the proposed amendment, this process can take from 6 - 9 months during which time the law student may not act as a certified legal intern. The delay is detrimental to law students who are interested in being certified and to the certified legal intern program. The proposed amendments require that the law student register with the Florida Board of Bar Examiners as a certified legal intern

registrant but allows the law student to be certified as a legal intern after passing a Level 2 criminal background investigation rather than waiting for the full admission background investigation to be completed. A Level 2 background investigation is both state and national in scope and can be completed in 1 - 3 weeks. The amendment accomplishes 3 goals: 1) it ensures that the public is protected by confirming that the law student has a clear criminal history before being certified as a legal intern; 2) it allows the law student to be certified in 1-3 weeks rather than 6-9 months; and 3) it requires early application to the Florida bar examination.

Source: Young Lawyers Division

Background Information – Member Commentary / Committee Action:

- Young Lawyers Division approved 60-0 by e-mail vote on March 25, 2016. Rules Committee approved 5-0 on a substantive and procedural basis on April 6, 2016.
- Program Evaluation Committee approved on a strategic basis by e-mail vote of 12-1 on April 19, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on April 28, 2016.

Board Action: Board of Governors approved with a vote of 36-8 and approved to waive second reading 35-9 on May 20, 2016.

RULE 11-1.9 CONTINUATION OF PRACTICE PROGRAM AFTER COMPLETION OF LAW SCHOOL PROGRAM OR GRADUATION

Explanation: Maintains requirement that a graduate from a non-Florida law school apply to become a member of the bar, allows the graduate to be certified as a legal intern after passing a Level 2 background investigation.

Reasons: The rule allows graduates of Florida law schools and non-Florida law schools to continue to act as a certified legal intern while awaiting admission to the bar. In order to be certified by this Court as a certified legal intern, the graduate must first receive a letter of clearance as to character and fitness from the Florida Board of Bar Examiners. According to the Florida Board of Bar Examiners, at the time the board considered the proposed amendment, this process can take from 6 - 9 months during which time the graduate may not act as a certified legal intern. As graduates of Florida law schools will already have received this letter, amendments to that subsection are not necessary. However, as graduates of non-Florida law schools would not have received a letter of clearance, the proposed amendments apply to graduates of non-Florida law schools only. The proposed amendments continue the requirement that the graduate make application to the bar but allows the graduate to be certified as a legal intern after passing a

Level 2 criminal background investigation rather than waiting for the full admission background investigation to be completed. A Level 2 background investigation is both state and national in scope and can be completed in 1 - 3 weeks. The amendment ensures that the public is protected by confirming that the graduate has a clear criminal history before being certified as a legal intern and allows the graduate to be certified in 1-3 weeks rather than 6-9 months thereby providing greater access to those in need of legal representation.

Source: Young Lawyers Division

Background Information – Member Commentary / Committee Action:

- Young Lawyers Division approved 60-0 by e-mail vote on March 25, 2016. Rules Committee approved 5-0 on a substantive and procedural basis on April 6, 2016.
- Program Evaluation Committee approved on a strategic basis by e-mail vote of 12-1 on April 19, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on April 28, 2016.

Board Action: Board of Governors approved with a vote of 36-8 and approved to waive second reading 35-9 on May 20, 2016.

Official Notice of Amendments

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file, which included all the proposals in all 3 biennial petitions that are being filed simultaneously, was published in the September 1, 2016 issue of the bar *News*. A copy of that published notice from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice can also be found at:

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/8E415C29C5A99DA285258014005E48F5>

No Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted no discrepancies between the Rules Regulating the Florida Bar as maintained by the bar and the Rules Regulating the Florida Bar as published in Thomson Reuters' *Florida Rules of Court*.

Request for Waiver of Rules Procedures

The Board of Governors waived second reading on the amendments to these rules. The requirement of second reading is required by Standing Board Policy 1.60(d), but not by rule 1-12.1. The amendments were noticed for final action in the bar *News* on April 15, 2016 and were noticed for filing with this Court on September 1, 2016.

The bar submits that there are no deviations from the requirements of R. Regulating Fla. Bar 1-12.1 and the deviation from the requirements of Standing Board Policy 1.60 are minimal and were properly waived by the Board of Governors by a vote of more than 2/3 of the Board of Governors members present and voting. The bar therefore requests that these additional revised proposals be accepted by this Court, pursuant to R. Regulating Fla. Bar 1-12.1(i).

Other Pending Amendments

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

- *In re Amendments to Rules Regulating the Florida Bar Rule 4-1.19 and Florida Family Law Rule of Procedure 12.745 (Collaborative Law Process)*, Case No. SC16-1685, was filed September 16, 2016; and
- *In re: Amendments to the Rules Regulating the Florida Bar - Subchapter 4-7 (Lawyer Referral Services)*, Case No. SC16-1470, was filed August 15, 2016;

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

Contents of Appendices

The complete text of all proposals is included in Appendix A to this petition, in legislative format (i.e., deleted language struck through, shown first, followed by new language underlined).

A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

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

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

Comments in Response to Amendments

The Florida Board of Bar Examiners filed comments in opposition to the proposal, which are attached in Appendix D. The following filed comments in support of the amendments: Jeffrey M. Hearne, Director of Litigation at Legal Services of Greater Miami and the Tenants' Rights Clinic at the University of Miami School of Law; Professor Larry Krieger, Florida State University School of Law; Laura A. Rosenbury, Dean, University of Florida Levin College of Law; Christopher M. Pietruszkiewicz, Dean, Stetson University College of Law; Iesha S. Nunes, President, The Florida Bar Young Lawyers Division; R. Alex Acosta, Dean, Florida International University College of Law; Patricia White, Dean, University of Miami School of Law; Julianne Holt, President, Florida Public Defender Association, Inc.; Kimberly Sanchez, Executive Director, Community Legal Services of Mid-Florida, Inc.; and James A. Kowalski, Jr., President, Project Director's Association.

Oral Argument Requested

The bar seeks oral argument regarding these amendments.

Effective Date Request

As to all amendments sought in this filing, the bar requests that any changes be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating the Florida Bar as requested in this petition.

Respectfully submitted,

/s/ John F. Harkness, Jr.

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CERTIFICATE OF TYPE SIZE AND STYLE

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

/s/ John F. Harkness, Jr.

John F. Harkness, Jr.
Executive Director
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CERTIFICATE OF READ-AGAINST

I certify that the Rules Regulating the Florida Bar set forth within this petition have been read against the most recent copy of Thomson Reuter's *Florida Rules of Court*.

/s/ John F. Harkness, Jr.

John F. Harkness, Jr.
Executive Director
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