

APPENDIX B

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

April 4, 2016

RULES REGULATING THE FLORIDA BAR

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT

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SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

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RULE 4-1.1 COMPETENCE

A lawyer ~~shall~~must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

COMMENT

Legal knowledge and skill

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer

The Vision 2016 Commission Technology Subcommittee recommends adding commentary to the rule addressing the need of lawyers to maintain a minimum level of competence relating to technology, as technology is extensively used in the practice of law and reminding lawyers of their obligation to safeguard

does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also rule 4-6.2.

Thoroughness and preparation

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. The lawyer should consult with the client about the degree of thoroughness and

the level of preparation required as well as the estimated costs involved under the circumstances.

Maintaining competence

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, and comply with all continuing legal education requirements to which the lawyer is subject.

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CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

SUBCHAPTER 6-10 CONTINUING LEGAL EDUCATION REQUIREMENT RULE

RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS

(a) Applicability. Every member except those exempt under ~~rule 6-10.3(c)(4) and (5)~~ shall subdivision (c) of this rule must comply and report compliance with the continuing legal education requirement. Members must apply for and receive approval by the bar of an

confidentiality of information, particularly as it relates to electronically stored documents. The American Bar Association adopted amendments to its model rules in response to recommendations from the ABA Ethics Commission 20/20 relating to technological changes requiring updating of terminology and concepts in the rules. Thirteen states adopted the change also. The concept of technological competence is already endorsed in Florida Ethics Opinions 06-2 and 10-2. Both opinions also address confidentiality relating to electronic storage and transmission of information. The subcommittee recommended both addition of the ABA Model Rule amendment and additional amendments drafted by the subcommittee to address technology.

Changes to subdivision (a) clarify which members must apply for continuing legal education exemption and which must apply and be approved for the exemption and are sponsored by bar staff.

The Vision 2016 Technology Subcommittee recommended changes to the continuing legal

exemption from compliance and reporting of continuing legal education under subdivisions (c)(1) through (c)(3) of this rule. Members described in subdivisions (c)(4) through (c)(6) of this rule are automatically exempt from compliance and reporting of continuing legal education.

(b) Minimum Hourly Continuing Legal Education Requirements. Each member ~~shall~~must complete a minimum of ~~30~~33 credit hours of approved continuing legal education activity every 3 years. Five of the ~~30~~33 credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental illness awareness programs and 3 of the 33 credit hours must be in approved technology programs. ~~Courses offering credit in professionalism must be approved by the center for professionalism. These 5 hours, which are to be included in, and not in addition to, the regular 30-hour~~33 credit hour requirement. If a member completes more than ~~30~~33 credit hours during any reporting cycle, the excess credits cannot be carried over to the next reporting cycle.

(c) Exemptions. Eligibility for an exemption, in accordance with policies adopted under this rule, is available for;

- (1) active military service;
- (2) undue hardship;
- (3) nonresident members not delivering legal services or advice on matters or issues governed by Florida law;
- (4) members of the full-time federal judiciary who are prohibited from engaging in the private practice of law;
- (5) justices of the Supreme Court of Florida and judges of the district courts of appeal, circuit courts, and county courts, and ~~such~~ other judicial officers and employees as ~~may be~~ designated by the Supreme Court of Florida; and,
- (6) inactive members of The Florida Bar.

(d) Course Approval. Course approval ~~shall be~~is set forth in policies adopted pursuant to this rule. Special policies ~~shall~~will be adopted for courses sponsored by governmental agencies for employee attorneys that ~~shall~~ exempt ~~such~~these courses from any course approval fee and may exempt ~~such~~these courses from other requirements as determined by the board of legal specialization and education.

(e) Accreditation of Hours. Accreditation standards ~~shall be~~are set forth in the policies adopted under this rule. ~~If a~~Any course is presented, ~~or sponsored by or has received credit approval from~~approved for credit by an organized integrated or voluntary state bar ~~(whether~~

education requirements to address lawyers' need for basic technological competence, as technology is extensively used in the practice of law. In order to educate lawyers on technology without diluting other course requirements, the subcommittee recommends increasing the number of continuing legal education requirements by 6 hours per 3-year cycle with a minimum of 6 hours in technology. The subcommittee obtained information from 45 other states, and only 1 of those states required fewer hours than the current 30 credit hours per 3-year cycle required in Florida, and only 5 others have an equivalent requirement. Other states range from 36 to 45 credit hours per 3-year cycle.

The Program Evaluation Committee after reviewing the Professionalism Center program recommends deletion of the requirement that the Professionalism Center approve courses offering professionalism credit as staff time spent reviewing applications for course credit could be spent directly serving bar members in producing courses and other written materials. Approval of professionalism course

~~integrated or voluntary), such course shall be~~ is deemed an approved course for purposes of this rule if the course meets the criteria for accreditation established by policies adopted under this rule.

(f) Full-time Government Employees. Credit hours ~~shall~~will be given full-time government employees for courses presented by governmental agencies. Application for credit approval may be submitted by the full-time government attorney before or after attendance, without charge.

(g) Skills Training Preadmission. The board of legal specialization and education may approve for CLER credit a basic skills or entry level training program developed and presented by a governmental entity. ~~If approved, credit~~Credit earned through attendance at ~~such an~~ approved course developed and presented by a governmental entity is applicable under subdivision (b) of this rule; if taken within 12 months prior to admission to The Florida Bar, shall be applicable under rule 6-10.3(b).

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credit would be moved to the Department of Legal Specialization and Education as are all other continuing legal education courses. Amendments in subdivision (b) are proposed by bar staff and change the requirement for basic skills completion prior to admission to The Florida Bar to match the requirement in Rule 6-12.3(b)(1), which was approved by the Florida Supreme Court on May 12, 2005 in case number SC04-914 (Fla. 2005).