

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO THE  
RULES REGULATING THE FLORIDA  
BAR - RULES 4-1.2 AND 4-6.6

CASE NO. SC17-

**PETITION TO AMEND THE RULES REGULATING  
THE FLORIDA BAR - RULES 4-1.2 AND 4-6.6**

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 Amendments**

The bar proposes new rule 4-6.6 and amendments to existing rule 4-1.2. This section provides information regarding development of these rules proposals as required by Part III of this Court's administrative order number AOSC06-14 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 source of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; and voting records of pertinent committees and the Board of Governors. There were no dissenting views within the Board of Governors.

RECEIVED, 03/17/2017 11:03:30 AM, Clerk, Supreme Court

## Amendments

### CHAPTER 4 RULES OF PROFESSIONAL CONDUCT SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

#### **RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION**

*Explanation:* Within subdivision (c), creates an exception from the requirement that client consent for legal services that are limited in scope be in writing for lawyers giving advice through a nonprofit limited legal services program under new proposed rule 4-6.6.

*Reasons:* The amendment is proposed as a companion to related proposed rule 4-6.6, which slightly relaxes application of conflicts rules in the context of short term, limited representation through a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school. There are numerous legal aid, court and local bar sponsored programs that offer limited legal services, including weekend or day clinics, hotlines, consultations, forms, and counseling of pro se litigants. It is difficult for lawyers to obtain written consent of clients in these situations, particularly where the consultation or advice occurs over the telephone or over the Internet. This slight relaxation of the rules would encourage lawyers to agree to engage in these limited representations, which will increase access to justice.

*Source:* Bar staff

*Background Information – Member Commentary / Committee Action:* Rules Committee approved 7-0 on substantive and procedural basis on November 29, 2016. Program Evaluation Committee approved 14-0 on strategic basis on December 8, 2016. Board of Governors first reading on December 9, 2016. The bar's Chief Financial Officer determined de minimus fiscal impact on December 20, 2016.

*Board Action:* Board of Governors approved on voice vote without objection on January 20, 2017.

### SUBCHAPTER 4-6 PUBLIC SERVICE

#### **RULE 4-6.6 SHORT-TERM LIMITED LEGAL SERVICES PROGRAMS**

*Explanation:* Proposes new rule 4-6.6 addressing a slight relaxation of application of the rules on conflicts of interest in the context of short-term, limited representation through a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school.

*Reasons:* This proposed rule slightly relaxes application of conflicts rules in the context of short term, limited representation through a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school. There are numerous legal aid, court and local bar sponsored programs that offer limited legal services, including weekend or day clinics, hotlines, consultations, forms, and counseling of pro se litigants. These services are usually limited to a single meeting between lawyer and client where the lawyer gives limited advice to a person or assists the person in filling out legal forms. It is difficult for lawyers to perform a conflicts of interest check in these situations. There is little risk in these situations that a lawyer will have or use confidential information to the detriment of an existing client of the lawyer or that lawyer's firm, or that the lawyer's loyalty to an existing client will be compromised, because of the limited nature of the representation. If the lawyer knows of a conflict of either the lawyer or the lawyer's firm, the lawyer would be precluded from giving the limited assistance and that person would be referred to another lawyer from a different firm. This slight relaxation of the rules would encourage lawyers to agree to engage in these limited representations, which will increase access to justice. The American Bar Association adopted a similar rule in American Bar Association Model Rule 6.5 in 2002. A copy of the American Bar Association model rule, similar rules adopted by California, Connecticut, Georgia, Massachusetts, Minnesota, New Hampshire, New York, North Dakota, Washington, and Wyoming, and a chart from the American Bar Association listing states adopting a similar rule with their differences from the model rule as of September 15, 2016, are attached in Appendix D.

*Source:* Pro Bono Legal Services Committee

*Background Information – Member Commentary / Committee Action:* Pro Bono Legal Services Committee approved 16-0 to recommend that the Board of Governors adopt American Bar Association Model Rule 6.5 but replacing the phrase “nonprofit organization or court” with “nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school” on October 20, 2016. Rules Committee approved 7-0 on substantive and procedural basis on November 29, 2016. Program Evaluation Committee approved 14-0 on strategic basis on December 8, 2016. Board of Governors first reading December 9, 2016. The bar's Chief Financial Officer determined de minimus fiscal impact on December 20, 2016.

*Board Action:* Board of Governors approved on voice vote without objection on January 20, 2017.

## Official Notice of Amendments

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the February 15, 2017 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 the following link:

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/34582ee948afee5f852580bf0049d471!OpenDocument>

### Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted 1 discrepancy between rule 4-1.2 as maintained by the bar and as published in Thomson Reuters' *Florida Rules of Court*. Thomson Reuters' had a period after the rule number (4-1.2). The bar verified that there is no period after the rule number by reviewing this Court's orders in the last 2 opinions adopting amendments to this rule: *Amendments to Rules Regulating the Florida Bar and the Florida Family Law Rules of Procedure (Unbundled Legal Services)*, 860 So.2d 394 (Fla. 2003) and *In re Amendments to the Rules Regulating The Florida Bar*, 933 So.2d 417, (Fla. 2006). The bar has notified the publisher, which has responded that the added period is part of the publisher's numbering convention and does not consider it an error that the publisher will correct.

### Editorial Corrections and Request for Waiver of Rules Procedures

During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors, but were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006. These editorial errors were not corrected in the official bar *News* notice. As approved by the Board of Governors and published in the official bar *News* notice, the chapter reference was inadvertently omitted from all the of the rules citations within the rule and comment. E.g., "rule 4-1.7" was approved and noticed as "rule 1.7."

The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal and the amendments themselves are non-controversial. The bar therefore requests that these additional revised proposals be accepted by this Court, and that this Court waive approval by the Board of Governors as to all the edits and Board of Governors approval and official notice in the print version of the bar *News* for all necessary rules, pursuant to R. Regulating Fla. Bar 1-12.1(i).

All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

### **Other Pending Amendments**

There are currently 6 pending petitions involving amendments to Rules Regulating the Florida Bar filed by the bar:

*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.

*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.

*In re: Amendments to The Rules Regulating the Florida Bar (Biennial Petition)*, Case No. SC16-1961, was filed on October 26, 2016.

*In re: Amendments to The Rules Regulating the Florida Bar (Biennial Housekeeping)*, Case No. SC16-1962, was filed on October 26, 2016.

*In re: Amendments to The Rules Regulating the Florida Bar - Rules 11-1.3 and 11-1.9 (Biennial Petition)*, Case No. SC16-1963, was filed on October 26, 2016.

*In re: Amendments to the Rules Regulating the Florida Bar - Chapter 21 Military Spouse Authorization to Engage in the Practice of Law in Florida*, Case No. SC17-156, was filed February 1, 2017.

The proposed amendments within this filing are unrelated to these 6 different rules petitions 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 for substantive amendments. Amendments to conform to this Court's style guide found in *In re: Guidelines for Rules Submissions*, Administrative Order AOSC06-14, June 14, 2006.

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

Information considered 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**

No comments were received by the bar in response to these amendments.

## **Oral Argument Not Requested**

The bar does not seek oral argument regarding these amendments, unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

## **Effective Date Request**

As to all amendments sought in this filing, the bar requests that any changes be made effective 30 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.

---

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

William J. Schifino, Jr.  
President 2016-17  
Florida Bar Number 564338

Michael J. Higer  
President-elect 2016-17  
Florida Bar Number 500798

Lori S. Holcomb  
Director, Division of Ethics and Consumer  
Protection  
Florida Bar Number 501018

Elizabeth Clark Tarbert  
Ethics Counsel  
Florida Bar Number 861294

The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
Tel: (850) 561-5600  
Primary E-mail Address:

jharkness@flabar.org  
Secondary E-mail Address: eto@flabar.org

### **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  
Florida Bar Number 123390

### **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  
Florida Bar Number 123390