

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE RULES CASE NO. SC18-
REGULATING THE FLORIDA BAR
CHAPTER 21 MILITARY SPOUSE
AUTHORIZATION TO ENGAGE IN THE
PRACTICE OF LAW IN FLORIDA AND
FLORIDA BOARD OF BAR EXAMINERS
AMENDMENTS TO RULES OF THE
SUPREME COURT RELATING TO
ADMISSIONS TO THE BAR 2-23
APPLICATION FEES

**JOINT PETITION TO AMEND THE RULES REGULATING THE
FLORIDA BAR AND RULES OF THE SUPREME COURT RELATING TO
ADMISSIONS TO THE BAR**

The Florida Bar (the bar) and the Florida Board of Bar Examiners (the board) petition this Court for an order amending the Rules Regulating the Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar and states:

Jurisdictional Statement

This petition has been authorized by the Board of Governors of The Florida Bar under R. Reg. Fla. Bar 1-12.1 and by the Florida Board of Bar Examiners pursuant to Article V, Section 15 of the Florida Constitution and Rule 1-12 of the Rules of the Supreme Court Relating to Admissions to the Bar.

Rule Development History

The bar filed a petition to request that this Court adopt new Chapter 21 of the Rules Regulating The Florida Bar on February 1, 2017 in case number SC17-

RECEIVED, 01/29/2018 01:13:32 PM, Clerk, Supreme Court

156. That proposal would authorize spouses of members of the United States Armed Forces stationed in Florida to practice law in Florida without taking the Florida Bar Examination under prescribed circumstances. In response to the bar's petition, the board filed a separate petition to adopt rule 2-23 of the Rules of the Supreme Court Relating to Admissions to the Bar to provide for an application fee for military spouses seeking authorization to practice in Florida under proposed Chapter 21 in case number SC17-230 on February 10, 2017. This Court consolidated the cases on November 3, 2017. This Court then dismissed the consolidated petitions with instructions for the bar and the board to re-file a joint petition with additional requirements of a time limit on the authorization to practice law and association with a member in good standing with The Florida Bar as part of a law firm or through mentoring within 90 days of the December 14, 2017 order. *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 (Fla. Dec. 14, 2017). The full history of those amendments is set forth in the petitions filed by the bar and the board in 2017.

The bar and board addressed this Court's order by amending proposed subchapter 21-4.1 and subchapter 21-6.1. The proposed title of subchapter 21-4.1 is changed to add "and requirement," to both the subchapter and rule titles; proposed subdivision (b) is amended to require employment by or a mentorship relationship with a Florida Bar member and changes its title; and proposed rule 21-6.1 is amended to add new subdivision (a)(1)(F) to include a provision that the authorization to practice terminates after 5 years have elapsed. No other changes to the proposals have been made. The bar's Military Affairs Committee, the original sponsor of the proposed new subchapter, reviewed and approved the amendments on January 20, 2018.

Summary and Discussion of Amendments

RULES REGULATING THE FLORIDA BAR

CHAPTER 21 MILITARY SPOUSE AUTHORIZATION TO ENGAGE IN THE PRACTICE OF LAW IN FLORIDA

Explanation: Creates new chapter 21 which would permit spouses of members of the U.S. armed forces to practice law in Florida without taking the Florida Bar Examination while the spouse is stationed in Florida, requiring

employment or mentoring by a Florida Bar member who is eligible to practice law in Florida. The new chapter sets forth the requirements for eligibility, application, certification by this Court, renewal, permissible activities while certified, continuing legal education, and termination of the eligibility to practice law by the military spouse.

Reasons: Due to the unique mobility requirements of military families, lawyers licensed in a jurisdiction other than Florida often have to relocate to Florida with their spouse who is in the military. Currently, that lawyer is unable to engage in the practice of law in Florida without completing the Florida Bar Examination. Moving to Florida and taking the Florida Bar Examination is often impractical because of the timing of the deployment to Florida and the dates the bar examination is given. The timing issues could result in the military spouse being reassigned before the lawyer spouse is admitted. The cost of having to take multiple bar examinations is also often prohibitive. For these reasons, some lawyer spouses choose to remain in the jurisdiction where they are licensed splitting families apart while the military spouse is stationed in Florida.

Recognizing the unique issues facing lawyer spouses of those in the military, in 2012 the American Bar Association adopted a resolution encouraging states to adopt a rule allowing for admission without having to take the bar examination. The American Bar Association resolution is supported by the Conference of Chief Justices. Chapter 21, the Military Spouse Authorization to Engage in the Practice of Law rule (commonly referred to as the military spouse rule) accomplishes the goals set forth by the American Bar Association and would allow lawyers licensed in a jurisdiction other than Florida whose spouse is serving in the United States armed forces in Florida to become a member of The Florida Bar without having to sit for the Florida Bar Examination. The chapter would only apply to lawyers who are spouses of active military personnel stationed in Florida. The lawyer would have to meet the eligibility requirements, including the passage of a character and fitness investigation by the Florida Board of Bar Examiners. The lawyer would become a member of The Florida Bar during the time their military spouse is stationed in Florida. Therefore, while it is full admission to The Florida Bar, the admission is temporary lasting only as long as the military spouse is stationed in Florida or 5 years, whichever is shorter. The lawyer would be required to be either employed by or in a mentoring relationship with a Florida Bar member in good standing who is eligible to practice law in Florida. As a member of The Florida Bar, the lawyer would be under the jurisdiction of this Court and subject to discipline for unethical conduct.

Since the prior petition was filed in case number SC17-156, more jurisdictions have adopted a military spouse rule. To date, 26 jurisdictions have adopted a military spouse rule (an increase from 23 at the time the original petition was filed). Most do not have a time limit for practicing as a military spouse, other than a change in circumstances. Of the 6 jurisdictions known to have a time limit, Maryland has a 2-year limit, the Virgin Islands has a 2-year limit which can be extended if the person is taking the bar exam, 3 states have 5-year limits, and 1 state has a 6-year limit.

Source: Military Affairs Committee

Background Information – Member Commentary / Committee Action: Rules Committee approved 6-0 on January 5, 2018. The bar's Chief Financial Officer determined de minimus financial impact on January 5, 2018. Military Affairs Committee approved unanimously on January 20, 2018. Program Evaluation Committee approved 6-0 on a strategic basis on January 25, 2018.

Board Action: Board of Governors approved unanimously on voice vote without objection waiving the requirements of first reading by the board and publication before filing, subject to approval by this Court, on January 26, 2018.

RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR

RULE 2-23 APPLICATION FEES

Explanation: The board recommends a change to rule 2-23, Application Fees, adding a flat fee of \$1,000 for military spouses seeking admission under the proposed Florida Bar rule allowing for certification of a lawyer who is the spouse of a full-time active duty member of the United States Armed Forces while the lawyer's spouse is stationed in Florida.

Reasons: The bar's proposed rule outlines the requirements for certification, including requiring military spouses to submit an application to the board, to pay an application fee established by the board, and to receive character and fitness clearance from the board.

In June 2014, the board considered the issue of a military spouse rule. At that time, the board adopted a policy to waive the late filing fee for any applicant who is a military spouse that can demonstrate that the military member's orders requiring a move to Florida were received after the timely filing deadline for the

examination. Additionally, the board's staff prioritizes the completion of the background investigation for any applicant in this circumstance, ensuring that the applicant is recommended for admission to the bar as soon as possible. The board will be able to provide the services that would be mandated under the bar's proposed rule change. If this Court approves the bar's proposed rule, the board will need a rule establishing the fee to be paid by military spouses under the bar's proposed rule.

For ease of implementation and to avoid confusion for either applicants utilizing the new rule or other practicing lawyer applicants, the board recommends a new rule requiring a single fee for military spouse applicants, rather than a range of fees dependent upon how long the military spouse has been practicing law (as is required of practicing lawyers presently, under rule 2-23.4). The board requests the military spouse fee be \$1,000, which is the current fee for applicants admitted to the practice of law for less than one year in another jurisdiction. The board deems it reasonable to utilize the lowest practicing lawyer fee for military spouse applicants so that no such applicant is required to pay a greater fee than would otherwise be required.

Since 2014, there have been two known applicants who have filed an application with the board because their military spouse was relocated to Florida. The board does not anticipate a significant increase in applications under the new Florida Bar rule, assuming it is approved by the Court, even with the requirement to take the Florida Bar Examination being eliminated. Even if, in some cases, the fees do not cover the cost of the investigations, it will not have a significant impact on overall costs of background investigations. Additionally, choosing the lowest of the practicing lawyer fees is in keeping with the spirit of making the process for admission (or temporary admission) less burdensome for military spouses.

Official Notice of Amendments

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file the amendments to the Rules Regulating The Florida Bar in this petition normally would be published in the bar *News* at least 30 days prior to filing. In order to file this petition as soon as possible, the bar is filing this petition immediately on approval by its board and will publish the full text of the rules in the February 15,

2018 issue of the bar *News* to provide notice to its members as described more fully below under the bar and board's request for waiver of rules procedures.

Discrepancy with Thomson Reuters' Florida Rules of Court

As these are entirely new rules, there is no discrepancy with the Rules Regulating The Florida Bar or the Rules of the Supreme Court Relating to Admissions to the Bar with those as published in Thomson Reuters' *Florida Rules of Court*.

Request for Waiver of Rules Procedures

The bar did not publish an official notice of its intent to file this petition in the bar *News* 30 days in advance of this petition as required by R. Regulating Fla. Bar 1-12.1(g). The bar did publish an official notice of the intent of the bar's board of governors to take final action on the amendments creating Chapter 21 of the Rules Regulating The Florida Bar in the January 1, 2018 issue of the bar *News*. The rule proposal was approved on its first presentation to the bar's board of governors and did not receive a "first reading" as required by Standing Board Policy 1.60(b)(1) and (d). The bar's board of governors approved waiver of first reading unanimously at its January 26, 2018 meeting as permitted by Bylaw 2-9.2 of the Rules Regulating The Florida Bar.

The prior petitions filed in case numbers SC17-156 and SC17-230 were filed in full compliance with all rules and policies, with 1 minor editorial change noted in the petition in case number SC17-156. Florida Bar members thus had ample notice and opportunity to comment to the bar and this Court on the original proposals that vary from the proposal in this petition in only 2 respects that were made at the direction of this Court.

Additionally, the bar will publish an official notice of the filing of this petition in the February 15, 2018 bar *News* so that Florida Bar members may comment directly to this Court. This Court may extend the deadline for comment if requested.

The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 and Standing Board Policy 1.60 were necessary to file a proposal with this Court as soon as possible. The bar therefore requests that this Court waive official notice in the print version of the bar *News*, pursuant to R. Regulating Fla. Bar 1-12.1(i).

Other Pending Amendments

There is currently 1 petition pending at this Court to amend Rules Regulating The Florida Bar, case number SC17-1965, in which members of The Florida Bar proposed amendments to chapters 3 and 4 to address disciplinary action relating to appellate court findings of frivolous filings. The proposed amendments within this filing are unrelated to the proposed amendments in case number SC17-1965 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 the text of the new proposed rules in legislative format and an abbreviated recitation of the reasons for the changes.

Comments in Response to Amendments

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

Oral Argument Not Requested

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

Effective Date Request

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

The bar and board request that this Court enter an order amending the Rules Regulating the Florida Bar and the Rules of the Supreme Court Relating to Admissions to the Bar as requested in this petition.

Respectfully submitted,

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902

Michael Higer
President 2017
Florida Bar Number 500798

Michelle Suskauer
President-elect 2017
Florida Bar Number 908230

John M. Stewart
President-elect Designate 2017
Florida Bar Number 120472

Tina Marie Fischer
Chair, Military Affairs Committee, 2016-17
Florida Bar Number 17282

William A. Spillias
Director, Unlicensed Practice of Law
Florida Bar Number 909769

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:
jdoyle@floridabar.org
Secondary E-mail Address: eto@flabar.org

Florida Board of Bar Examiners
Elizabeth J. Walters, Chair

Michele A. Gavagni
Executive Director

/s/ James T. Almon

James T. Almon
General Counsel
Florida Board of Bar Examiners
1891 Eider Court
Tallahassee, FL 32399-1750
(850) 487-1292 almonjt@flcourts.org
Florida Bar #17173

CERTIFICATE OF TYPE SIZE AND STYLE

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

/s/ Joshua E. Doyle

Joshua E. Doyle Executive
Director Florida Bar
Number 25902

CERTIFICATE OF READ-AGAINST

I certify that the Rules Regulating The Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar set forth within this petition have been read against the most recent copy of *Thomson Reuter's Florida Rules of Court* and there is no discrepancy because this is an entirely new chapter of the Rules Regulating The Florida Bar and a new Rule of the Supreme Court Relating to Admissions to the Bar.

/s/ Joshua E. Doyle

Joshua E. Doyle Executive
Director Florida Bar
Number 25902