

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR RE:  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR –  
BIENNIAL PETITION

CASE NO. SC18-

**THE FLORIDA BAR’S PETITION TO AMEND THE RULES  
REGULATING THE FLORIDA BAR – BIENNIAL PETITION**

The Florida Bar (the bar) respectfully requests that the Supreme Court of Florida adopt these amendments to the Rules Regulating The Florida Bar.

**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 rules or amendments to existing rules as the bar’s biennial submission of rules amendments as indicated in the listing that follows. The bar is filing 1 petition this year as there are not a large number of rules with proposed amendments, and the bar has not identified any proposal as being particularly controversial. 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 views within the Board of Governors, if any, regarding each submission.

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## Amendments

### CHAPTER 1 GENERAL

#### SUBCHAPTER 1-3 MEMBERSHIP

##### **RULE 1-3.7 REINSTATEMENT TO MEMBERSHIP**

*Explanation:* Within subdivision (c), changes 10 hours to 11 hours for the number of continuing legal education hours required for each year or partial year of retirement or delinquency. Within subdivision (g)(2), changes 30-hour continuing legal education requirement to 33-hour continuing legal education requirement for reinstatement of inactive members who are required to complete continuing legal education requirements to be reinstated.

*Reasons:* This Court approved amendments to Rule 6-10.3(b) on September 29, 2016, effective January 1, 2017 in *In re: Amendments to Rules Regulating the Florida Bar 4-1.1 and 6-10.3*, 200 So.3 1225, Case No. SC16-574. The amendments increased the number of hours in a 3-year reporting cycle from 30 to 33. The proposed changes reflect that increase for reinstatement.

*Source:* Bar staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved amendments 5-0 on a substantive and procedural basis to subdivision (c) on April 10, 2017.
- The bar's Chief Financial Officer determined de minimus impact on April 17, 2017.
- Rules Committee approved amendments 7-0 on a substantive and procedural basis to subdivision (g)(2) on April 20, 2017.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 25, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on July 21, 2017.

### CHAPTER 2 BYLAWS OF THE FLORIDA BAR

#### SUBCHAPTER 2-3 BOARD OF GOVERNORS

##### **RULE 2-3.11 QUORUM**

*Explanation:* Changes authorize electronic meetings.

*Reasons:* In conjunction with amendments to Rules 2-3.11 and 2-9.6, the amendments to this bylaw give specific authority to the Board of Governors to create rules of order to address differences with Robert's Rules of Order, particularly to allow for electronic meetings. Robert's Rules of Order provide that meetings may be held electronically only if the organization's bylaws provide for

exceptions to Robert's Rules of Order. Many committees wish to meet electronically. Electronic meetings may include by telephone, by video conference, or by email. The current bylaw only addresses quorum, which is unnecessary as it is the same as in Robert's Rules of Order.

*Source:* Bar Leadership

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's Chief Financial Officer determined de minimus impact on July 1, 2017.
- Program Evaluation Committee approved 10-1 on a strategic basis on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

## **RULE 2-9.2 STANDING BOARD POLICIES**

*Explanation:* Adds that the Board of Governors may adopt or amend rules of order and that adoption and amendment of standing board policies and rules of order are effective on the date set by the Board of Governors.

*Reasons:* In conjunction with amendments to Rules 2-3.11 and 2-9.6, the amendments to this bylaw give specific authority to the Board of Governors to create rules of order to address differences with Robert's Rules of Order, particularly to allow for electronic meetings. Robert's Rules of Order provide that meetings may be held electronically only if the organization's bylaws provide for exceptions to Robert's Rules of Order. Many committees wish to meet electronically. Electronic meetings may include by telephone, by video conference, or by email.

*Source:* Bar Leadership

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's Chief Financial Officer determined de minimus impact on July 1, 2017.
- Program Evaluation Committee approved 10-0 on a strategic basis on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

## **RULE 2-9.4 ETHICS**

*Explanation:* Within subdivision (e), changes "party" to "person or entity" throughout and adds that lawyers may make ethics inquiries on their own behalf.

*Reasons:* The change will avoid any confusion, because there are no "parties" in ethics opinions. Ethics opinions are not litigation matters, so there technically are no "parties." The changes also clarify that lawyers may make ethics inquiries on their own behalf even when they are disqualified from representing another person in the ethics opinion process. The entire provision is re-written to be clearer.

*Source:* Bar staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 7-0 on a substantive and procedural basis with minor style edits on October 17, 2017.
- The bar's chief financial officer determined de minimus impact on October 20, 2017.
- Program Evaluation Committee approved 12-0 on a strategic basis on December 7, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on January 26, 2018.

## **RULE 2-9.6 RULES OF ORDER**

*Explanation:* Adds to the requirement that the bar follow Robert's Rules of Order an exception for special rules of order in the standing board policies.

*Reasons:* In conjunction with amendments to Rules 2-3.11 and 2-9.2, the amendments to this bylaw give specific authority to the Board of Governors to create rules of order to address differences with Robert's Rules of Order, particularly to allow for electronic meetings. Robert's Rules of Order provide that meetings may be held electronically only if the organization's bylaws provide for exceptions to Robert's Rules of Order. Many committees wish to meet electronically. Electronic meetings may include by telephone, by video conference, or by email. This provision allows the Board of Governors to create special rules of order for variations from Robert's Rules of Order.

*Source:* Bar Leadership

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's Chief Financial Officer determined de minimus impact on July 1, 2017.

- Program Evaluation Committee approved on a strategic basis 10-0 on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

**RULE 2-9.7 INSURANCE FOR MEMBERS OF BOARD OF GOVERNORS, OFFICERS, GRIEVANCE COMMITTEE MEMBERS, UPL COMMITTEE MEMBERS, CLIENTS' SECURITY FUND COMMITTEE MEMBERS, AND EMPLOYEES**

*Explanation:* Amends the rule to provide that indemnification for persons acting in official capacities on behalf of the bar will be indemnified as provided in standing board policies.

*Reasons:* The rule is duplicative of the bar's Standing Board Policy 3.20. A copy of Standing Board Policy 3.20 is attached in Appendix D.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 7-0 on substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

*Board Action:* Board of Governors approved on voice vote without objection on December 9, 2016.

**RULE 2-9.8 PRACTICE RESOURCE INSTITUTE**

*Explanation:* Deletes the bylaw in its entirety.

*Reasons:* The bylaw is duplicative of Bylaw 2-3.2(d)(7), which provides that "The board of governors may establish, maintain, and supervise. . . a program for providing advice and educational information to members of the bar concerning the operation and management of law offices." Bylaw 2-9.8 references the program by a specific name. The name of the program has changed at least 2 times (from Law Office Management Assistance Service to Practice Resource Institute, then to Practice Resource Center). Deleting the bylaw in its entirety and leaving existing bylaw 2-3.2(d)(7) in place will prevent the duplicative bylaw and avoid having to amend the bylaw whenever the name of the program changes.

*Source:* Bar staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on substantive and procedural basis on January 31, 2018.
- The bar's Chief Financial Officer determined de minimus impact on March 12, 2018.
- Program Evaluation Committee approved 13-0 on strategic basis on March 22, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on consent calendar on May 18, 2018.

CHAPTER 3 RULES OF DISCIPLINE

SUBCHAPTER 3-7 PROCEDURES

**RULE 3-7.2 PROCEDURES ON CRIMINAL OR PROFESSIONAL MISCONDUCT; DISCIPLINE ON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT**

*Explanation:* Subdivisions (d), (e), (f) and (i) are amended to make clear that findings of guilty or nolo contendere in a felony case must be reported to the bar. The amendment clarifies in each subdivision that the judgment(s) referred to in the rule are judgments of guilt of a felony offense. The first sentence of subdivision (f) is amended to change "will" to "may."

*Reasons:* The current rule was unclear. The subject line of subdivisions (d), (e) and (f) of the rule made the distinction between findings of guilt of a felony offense, but the body of these rule subdivisions did not. Amendments will make the rule internally consistent and amendments will make the body of the rule match the titles to the subdivisions of the rule. Changes to subdivision (f) give bar counsel discretion to make exceptions in instances of malum prohibitum and other types of crimes where no scienter is required.

*Source:* Disciplinary Procedure Committee

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved 7-0 amendment to subdivision (e) on March 26, 2015.
- Disciplinary Procedure Committee approved 8-0 changes to subdivisions (d), (e) and (f) on October 15, 2015.
- Disciplinary Procedure Committee voted 6-1 to approve further amendments to subdivision (f) on December 8, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 20, 2016.

- Program Evaluation Committee approved 8-0 on a strategic basis on January 19, 2017.
- Rules Committee approved on a procedural basis by an e-mail vote of 6-0 on February 6, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on March 24, 2017.

### **RULE 3-7.10 REINSTATEMENT AND READMISSION PROCEDURES**

*Explanation:* Amends subdivision (f)(4)(B) of Rule 3-7.10 to clarify that a petitioner may not file a petition for reinstatement before the petitioner has completed all the elements of rehabilitation, including re-taking and passing required portions of the Florida Bar exam.

*Reasons:* There was confusion among respondents and bar staff regarding whether a suspended lawyer could file a petition for reinstatement before having completed and passed the required portions of the Florida Bar examination and the Multistate Professional Responsibility examination. Some respondents were registering to re-take the bar examination and then filing their petitions for reinstatements before they had the examination results, causing delays and confusion in the process. The amendment makes clear that a petitioner must have proof of completion and passing the bar examination before filing a petition for reinstatement.

*Source:* Bar staff

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved 7-0 on December 8, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on December 20, 2016.
- Program Evaluation Committee approved 8-0 on a strategic basis on January 19, 2017.
- Rules Committee approved on a procedural basis by an e-mail vote of 6-0 on February 6, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on March 24, 2017.

### **RULE 3-7.11 GENERAL RULES OF PROCEDURE**

*Explanation:* Within subdivision (h), amendments make the rule consistent with changes to the standing board policy on disqualification and unlicensed practice of law rules on disqualification.

*Reasons:* Amendments bring consistency to bar rules and policies regarding disqualification.

*Source:* Program Evaluation Committee and Disciplinary Procedures Committee

*Background Information – Member Commentary / Committee Action:*

- Referred by Program Evaluation Committee subcommittee during review of standing board policies on March 12, 2015.
- Disciplinary Procedure Committee approved 8-0 on July 20, 2017.
- Rules Committee approved 7-0 on a procedural basis on August 1, 2017.
- Program Evaluation Committee approved 11-0 on a strategic basis on October 5, 2017.
- The bar's chief financial officer determined de minimus impact on October 23, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on January 26, 2018.

### **RULE 3-7.15 AMENDMENTS**

*Explanation:* The rule is eliminated as duplicative of revised Rule 1-12.1 and Standing Board Policy 1.60.

*Reasons:* The change eliminates a duplicative rule, making the rules easier to read and to follow.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved style changes by vote of 5-0 on January 29, 2015.
- Program Evaluation Committee approved on a strategic basis by voice vote of 12-0 on March 26, 2015.
- Rules Committee voted 5-0 to defer and refer the issue back to Disciplinary Procedures Committee to either recommend deletion of the rule in its entirety as duplicative of Rule 1-12.1 and Standing Board Policy 1.60, or to make consistent with Rules Committee proposed amendments to Rule 1-12.1 and Standing Board Policy 1.60 on April 16, 2015



- Disciplinary Procedures Committee approved the proposed elimination of Rule 3-7.15 by voice vote of 5-0 on May 25, 2017.
- Rules Committee approved 6-0 on procedural basis on July 20, 2017.
- The bar's Chief Financial Officer determined de minimus impact on September 28, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

**CHAPTER 4 RULES OF PROFESSIONAL CONDUCT**  
**SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP**  
**RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION**

*Explanation:* Within the second paragraph of the comment, corrects a rule reference from 4-1.16(b)(4) to 4-1.16(b)(2).

*Reasons:* The appropriate rule reference is 4-1.16(b)(2), which permits withdrawal if “the client insists upon taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement.” In contrast, the comment currently refers to permissive withdrawal under (b)(4), which allows withdrawal when “the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.”

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on April 3, 2018.
- The bar's Chief Financial Officer determined de minimus impact on April 4, 2018.
- Program Evaluation Committee approved 11-0 on a strategic basis on May 17, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote, including waiving first reading, on May 18, 2018.

**RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES**

*Explanation:* Within subdivision (f)(4)(B)(i)(d), makes an editorial correction to omit redundant language.

*Reasons:* Florida Bar member Peter Walsh requested an amendment, stating that use of both "institution of" and "is filed" is redundant and requests that the word "post-judgment" should not be hyphenated per *Black's Law Dictionary*. Mr. Walsh's email is attached in Appendix D.

The language was adopted in: *In re Amendments to Rules Regulating The Florida Bar*, 718 So. 2d 1179, 1208 (Fla. 1998). The following changes were adopted by this Court:

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

*Source:* Florida Bar member

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 5-0 on a substantive and procedural basis on January 31, 2018.
- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- The bar's Chief Financial Officer determined de minimus impact on April 5, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on consent calendar on May 18, 2018.

#### **RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES**

*Explanation:* Deletes the prohibition against charging the client a service charge for use of a credit plan in subdivision (h) and the comment.

*Reasons:* Florida Bar member Griffin Klema requested an amendment to Rule 4-1.5 (h) that would delete the prohibition against passing the costs of credit plans and credit cards to clients because he believes the prohibition is an antitrust violation. Although the bar does not believe it is an anti-trust violation, the bar approved this change, believing that bar members should be allowed to charge clients for the actual service charge to the lawyer from credit card companies when the lawyer accepts payment for attorney's fees or costs by credit card. Mr. Klema's email is attached in Appendix D.

*Source:* Florida Bar member

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on January 31, 2018.
- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- The bar's Chief Financial Officer determined de minimus impact on April 5, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on May 18, 2018.

#### **RULE 4-1.10**

*Explanation:* Removes commentary regarding imputation of conflicts when a lawyer changes firms and changes commentary titles.

*Reasons:* The commentary seems to contradict subdivision (a) of the rule. Florida's rules on conflicts involving former clients and imputation of conflicts differ from the ABA Model Rule. ABA Model Rules 1.9 and 1.10 deal with imputed conflicts of interest of former clients and whether those conflicts will be imputed when a lawyer changes firms. Florida's rule 4-1.10 is the sole rule that addresses imputation of conflicts of interests and is based on the former ABA Model Rule 1.10. The commentary at issue actually originally appeared in ABA Model Rule 1.10, was moved to ABA Model Rule 1.9, and has since been removed from ABA Model Rule 1.9 after extensive changes to the ABA Model Rules were made in 2002 at the request of the ABA Ethics Commission 2000. The changes to the commentary titles better reflect what is addressed in the commentary below the title.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 5-0 on a substantive and procedural basis on April 10, 2017.
- The bar's Chief Financial Officer determined de minimus impact on April 17, 2017.
- Program Evaluation Committee approved 14-0 on a strategic basis on May 25, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on July 21, 2017.

#### **RULE 4-1.19 COLLABORATIVE LAW PROCESS IN FAMILY LAW**

*Explanation:* Within subdivisions (a) and (c) and the comment, deletes the word "prospective" and clarifies that the informed consent must occur before beginning the collaborative law process. Deletes subdivision (a)(3) as duplicative of subdivision (a)(1).

*Reasons:* The rule is amended at the request of Florida Bar member Robert Merlin. Clients frequently retain lawyers in family law matters before entering the collaborative law process, so it is not always accurate to describe them as "prospective" clients. The change accurately indicates the discussion and informed consent that must occur before entering the collaborative law process, which does

not always happen before the clients hire collaborative lawyers. The other change is to remove a duplicative provision. Mr. Merlin's letter is attached in Appendix D.

*Source:* Florida Bar member Robert Merlin

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 7-0 on a substantive and procedural basis on October 17, 2017.
- The bar's chief financial officer determined de minimus impact on October 23, 2017.
- Program Evaluation Committee approved 12-0 on a strategic basis on December 7, 2017.

*Board Action:* Board of Governors approved on voice vote without objection on January 26, 2018.

## SUBCHAPTER 4-5 LAW FIRMS AND ASSOCIATIONS

### **RULE 4-5.8 PROCEDURES FOR LAWYERS LEAVING LAW FIRMS AND DISSOLUTION OF LAW FIRMS**

*Explanation:* Removes reference to the title of a specific bar program from the comment.

*Reasons:* The particular bar program has changed titles at least twice (from Law Office Management Assistance Service to Practice Resource Institute, then to Practice Resource Center) and may change again. Omitting the specific title of the program will avoid having to change the rule in the event the title of the program changes again.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on January 31, 2018.
- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- The bar's Chief Financial Officer determined de minimus impact on April 4, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on consent calendar on May 18, 2018.

## SUBCHAPTER 4-6 PUBLIC SERVICE

### **RULE 4-6.5 VOLUNTARY PRO BONO PLAN**

*Explanation:* Amendments fix grammatical errors, conform to this Court's Guidelines for Rules Submissions, and remove outdated language.

*Reasons:* Amendments fix grammatical errors and omits language specific to inception of the program that is no longer applicable.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 7-0 on a substantive and procedural basis on July 11, 2016.
- Program Evaluation Committee approved 13-0 on a strategic basis on July 28, 2016.
- The bar's Chief Financial Officer determined de minimus fiscal impact on August 10, 2016.

*Board Action:* Board of Governors approved on consent calendar on voice vote without objection on December 9, 2016.

## SUBCHAPTER 4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

### **RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT**

*Explanation:* Removes reference to the title of a specific bar program.

*Reasons:* The particular bar program has changed titles at least twice (from Law Office Management Assistance Service to Practice Resource Institute, then to Practice Resource Center) and may change again. Omitting the specific title of the program will avoid having to change the rule in the event the title of the program changes again.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Rules Committee approved 6-0 on a substantive and procedural basis on January 31, 2018.
- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- The bar's Chief Financial Officer determined de minimus impact on April 4, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on consent calendar on May 18, 2018.

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION  
SUBCHAPTER 6-1 GENERALLY  
**RULE 6-1.2 PUBLIC NOTICE**

*Explanation:* This amendment adds the words "board certified" in front of the words "specialist" and "expert" to indicate those that have been certified by The Florida Bar, for the general information of the public.

*Reasons:* The U.S. District Court for the Northern District of Florida (Judge Robert L. Hinkle) issued an order on September 30, 2015 in *Searcy v. The Florida Bar*, 140 F. Supp. 3d 1290 (N.D. Fla. 2015), in which the Searcy law firm sued the bar regarding 2 lawyer advertising issues: 1) the prohibition against advertising past results unless they are objectively verifiable; and 2) the prohibition against claiming specialization or expertise unless the lawyer is board certified.

The federal trial court upheld the prohibition against advertising past results unless they are objectively verifiable. However, the federal trial court enjoined the bar from enforcing the prohibition against claiming specialization or expertise unless the lawyer is board certified. Amendments address the federal court order.

*Source:* Board of Legal Specialization and Education

*Background Information – Member Commentary / Committee Action:*

- Board of Legal Specialization approved unanimously on April 8, 2016.
- Certification Plan of Appeals Committee approved 5-0 on a substantive basis on August 11, 2016.
- Program Evaluation Committee approved 11-0 on a strategic basis on September 29, 2016.
- Rules Committee approved 6-0 on a procedural basis on October 5, 2016.
- The bar's chief financial officer determined de minimus fiscal impact on October 25, 2016.

*Board Action:* Board of Governors approved on consent calendar on voice vote without objection on December 9, 2016.

**RULE 6-10.3 MINIMUM CONTINUING LEGAL EDUCATION STANDARDS**

*Explanation:* Within subdivision (b), adds a 1-hour requirement of professionalism credit, included in, not in addition to, the regular 33 credit hour requirement.

*Reasons:* In other fields, continuing education courses specifically focus on professionalism. This Court's Commission on Professionalism agreed that it was

necessary that the bar require 1 of the 5 ethics credits be completed in professionalism for the 3-year reporting cycle.

*Source:* Supreme Court of Florida Commission on Professionalism and the Board of Legal Specialization and Education

*Background Information – Member Commentary / Committee Action:*

- Supreme Court Commission on Professionalism approved unanimously on June 22, 2017.
- Board of Legal Specialization and Education approved unanimously on September 29, 2017.
- The Certification Appeals Committee approved unanimously on October 25, 2017.
- Program Evaluation Committee approved 12-0 on a substantive and strategic basis on December 7, 2017.
- Rules Committee approved 6-0 with non-substantive changes to comply with this Court’s Guidelines on Rules Submissions on December 11, 2017.
- Budget Committee unanimously approved on January 24, 2018.

*Board Action:* Board of Governors approved on voice vote without objection on January 26, 2018.

## CHAPTER 14 GRIEVANCE MEDIATION AND FEE ARBITRATION

### SUBCHAPTER 14-6 NATURE; ENFORCEMENT OF AWARD; EFFECT OF FAILURE TO PAY

#### **RULE 14-6.1**

*Explanation:* Amends rule to add comment clarifying the meaning of “just cause” in subdivision (c) of the rule.

*Reasons:* The “just cause” exception to the payment requirement under the rule was being used as a defense for unjustifiable refusals by lawyers to pay arbitration awards to their clients and former clients within 30 days of an order by an arbitrator. Comment clarifies the meaning of “just cause” under subdivision (c) of the rule. The lack of funding in the comment refers to lawyers who were ordered to pay awards to past clients and argued that they did not have the funds or cash flow to pay the award and to meet office payroll, pay law firm light bill, or other recurring costs of a law firm.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedure Committee approved 7-0 on a substantive basis on December 7, 2017 and January 25, 2018.

- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- Rules Committee approved 6-0 on a procedural basis on April 3, 2018.
- The bar's chief financial officer determined de minimus fiscal impact on April 3, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote, including waiving first reading, on May 18, 2018.

## SUBCHAPTER 14-7 IMMUNITY AND CONFIDENTIALITY

### **RULE 14-7.1 IMMUNITY AND CONFIDENTIALITY**

*Explanation:* Non-substantive changes conform the rule to this Court's style guide.

*Reasons:* Proposed amendment to extend immunity from civil liability to also include immunity from bar complaints unless the claimant has taken steps to challenge the award or decision in court was recommended by the Standing Committee on Grievance Mediation and Fee Arbitration to ensure adequate volunteer support for the Grievance Mediation and Fee Arbitration Program. Proposed amendment was rejected by Disciplinary Procedures Committee on January 19, 2017, but style changes were approved.

*Source:* Standing Committee on Grievance Mediation and Fee Arbitration  
*Background Information – Member Commentary / Committee Action:*

- Standing Committee on Grievance Mediation and Fee Arbitration approved 14-0 with 1 recusal on August 28, 2015.
- Disciplinary Procedures Committee voted 5-0 not to approve the proposed provision "Members of the standing committee, mediators, arbitrators, and staff who are also members of The Florida Bar are also immune from bar complaints unless the claimants have challenged the arbitration award or decision in a court of competent jurisdiction," but to approve all other changes, on January 19, 2017.
- Program Evaluation Committee approved 12-0 on a strategic basis on March 23, 2017.
- Rules Committee approved 5-0 on a procedural basis on April 10, 2017.
- The bar's chief financial officer determined de minimus impact on April 19, 2017.

*Board Action:* Board of Governor's approved on consent on May 26, 2017.



CHAPTER 18 MILITARY LEGAL ASSISTANCE COUNSEL RULE  
SUBCHAPTER 18-1 GENERALLY  
**RULE 18-1.2 DEFINITIONS**

*Explanation:* Within subdivision (c), adds “eligible to practice law in Florida” to describe members in good standing.

*Reasons:* The amendment in subdivision (c) adds the requirement that Florida Bar members who supervise out of state lawyers as approved legal assistance practitioners must be eligible to practice law in Florida to further protect the public. A lawyer who supervises an approved legal assistance practitioner in Florida should be eligible to practice law in Florida in order to properly supervise the authorized legal aid practitioner.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Program Evaluation Committee approved 14-0 on a substantive and strategic basis on July 23, 2015.
- Rules Committee approved 5-0 on a procedural basis on August 13, 2015.
- Budget Committee approved the fiscal impact 5-0 on October 26, 2015.

*Board Action:* Board of Governors approved on voice vote without objection on December 4, 2015.

CHAPTER 20 FLORIDA REGISTERED PARALEGAL PROGRAM  
SUBCHAPTER 20-3 ELIGIBILITY REQUIREMENTS  
**RULE 20-3.1 REQUIREMENTS FOR REGISTRATION**

*Explanation:* This amendment creates new subdivision (a)(6), which expands the registration requirement for lawyers licensed in other states.

*Reasons:* By expanding the registration requirement, lawyers who are licensed and members in good standing in other states can be registered paralegals without meeting the minimum paralegal work experience requirement. The change will expand the category of persons eligible to become Florida registered paralegals and increase membership in the program.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Florida Registered Paralegal Standing Committee approved 7-0 on June 22, 2017.
- Rules Committee approved 6-0 on a substantive and procedural basis on January 31, 2018.

- Program Evaluation Committee approved 13-0 on a strategic basis on March 22, 2018.
- The bar's chief financial officer determined de minimus impact on April 5, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote on May 18, 2018.

## SUBCHAPTER 20-5 INELIGIBILITY FOR REGISTRATION OR RENEWAL **RULE 20-5.2 DUTY TO UPDATE**

*Explanation:* Adds notification by The Florida Bar to employing or supervising lawyer of any changes to a Florida Registered Paralegal's registration status.

*Reasons:* As the rule exists now, there is no requirement for Florida Registered Paralegals to notify their employing or supervising lawyer of any changes to their Florida Registered Paralegal status. The amendment would require The Florida Bar to notify the supervising lawyer of any changes to their status as it may have an impact on the lawyer's business operations, i.e., billing, letterhead, business cards, etc.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Florida Registered Paralegal Standing Committee approved 7-0 on June 22, 2017.
- Rules Committee approved 6-0 on a substantive and procedural basis on April 3, 2018.
- The bar's chief financial officer determined de minimus impact on April 5, 2018.
- Program Evaluation Committee approved 11-0 on a strategic basis on May 17, 2018.

*Board Action:* Board of Governors approved by unanimous voice vote, including waiving first reading, on May 18, 2018.

## SUBCHAPTER 20-6 CONTINUING EDUCATION **RULE 20-6.1 GENERALLY**

*Explanation:* The amendment increases continuing education requirement from 30 to 33 hours within a 3-year cycle and adds that 3 of the 33 hours must be in technology.

*Reasons:* The Vision 2016 Technology Subcommittee recommended changes to the continuing education requirements for lawyers' need for basic

technological competence. This Court approved amendments to Rule 6-10.3(b) on September 29, 2016, effective January 1, 2017 in *In re: Amendments to Rules Regulating the Florida Bar 4-1.1 and 6-10.3*, 200 So.3 1225 (Fla. 2016), Case No. SC16-574. The amendments increased the number of hours in a 3-year reporting cycle from 30 to 33 for lawyers, with 3 of those hours required to be in technology. This amendment provides continuity between and consistency with the standards set for lawyers, as technology is extensively used in the practice of law.

*Source:* Florida Registered Paralegal Standing Committee

*Background Information – Member Commentary / Committee Action:*

- Florida Registered Paralegal Standing Committee approved 5-0 on January 27, 2017.
- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's chief financial officer determined de minimus impact on July 13, 2017.
- Program Evaluation Committee approved 10-0 on a strategic basis on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

## SUBCHAPTER 20-8 REVOCATION OF REGISTRATION

### **RULE 20-8.3 COMPLAINT PROCESSING**

*Explanation:* Within subdivision (e), adds the requirement for Florida Registered Paralegals to notify their supervising lawyer if a complaint has been filed against them.

*Reasons:* Similar to lawyers, the supervising lawyer should be made aware of any complaints made against a paralegal that they are responsible for supervising. As the rule exist now, the supervising lawyer is not notified of any written complaint filed against their Florida Registered Paralegal.

*Source:* Florida Registered Paralegal Standing Committee

*Background Information – Member Commentary / Committee Action:*

- Florida Registered Paralegal Standing Committee approved 5-0 on January 27, 2017.
- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's chief financial officer determined de minimus impact on July 13, 2017.

- Program Evaluation Committee approved 10-0 on a strategic basis on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

## **RULE 20-8.6 DISPOSITION OF COMPLAINTS**

*Explanation:* Within subdivision (g), adds "letter of advice."

*Reasons:* Similar to lawyer discipline, this amendment would authorize the district paralegal committee to use additional dispositions of complaints.

*Source:* Bar Staff

*Background Information – Member Commentary / Committee Action:*

- Florida Registered Paralegal Standing Committee approved 5-0 on January 27, 2017.
- Rules Committee approved 6-0 on a substantive and procedural basis on June 6, 2017.
- The bar's chief financial officer determined de minimus impact on July 13, 2017.
- Program Evaluation Committee approved 10-0 on a strategic basis on July 20, 2017.

*Board Action:* Board of Governors passed on voice vote without objection on October 6, 2017.

## **Official Notice of Amendments**

Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file was published in the September 15, 2018 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:

<https://www.floridabar.org/news/tfb-news/?durl=%2Fdivcom%2Fjn%2Fjnnews01.nsf%2F8c9f13012b96736985256aa900624829%2Fb68a91376bb4fc27852582e9005562c4>

## Discrepancy with Thomson Reuters' Florida Rules of Court

During the preparation of this petition, the bar noted 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*. The bar has notified the publisher of the errors below. The publisher has indicated that the errors will be corrected.

- In the first sentence of the first paragraph of the comment to rule 3-7.10, there should be a space between the “2d” and the “994” in the case cite. The comment to the rule was added in *In re Amendments to the Rules Regulating The Florida Bar (Biennial Report)*, 140 So.3d 541 (Fla. 2014), and the space is present in the order. There was an amendment to the rule ordered in *In re Amendments to the Rules Regulating The Florida Bar (Biennial Petition)*, 167 So.3d 412 (Fla. 2015), but no change was made to the comment.
- In the 8<sup>th</sup> paragraph of the section of the comment to 4-1.5 titled “Contingent fee regulation,” there should be no space between “5” and “(f)” in “Rule 4-1.5(f)(4)(B)(iii).” The language was added to the comment in *In re Amendment to the Rules Regulating The Florida Bar—Rule 4–1.5(f)(4)(B) of the Rules of Professional Conduct*, 939 So.2d 1032 (Fla. 2006), with no change in subsequent petitions amending other language in the rule.
- At the end of the comment to rule 4-1.5, Thomson Reuters' has an additional, second “Comment” heading where the comment section should end and has the “Credit plans” section printed a second time beneath. This clearly is an editorial error of Thomson Reuters' and should be removed.
- In the comment section to rule 4-1.10 titled “Adverse positions,” there should be no space between the “1.” and the “9” in “4-1.9(a).” There is no space in *In re Amendments to the Rules Regulating The Fla. Bar*, 933 So. 2d 417 (Fla. 2006), as revised on denial of reh'g (June 29, 2006), and no change in subsequent petitions amending the rule.

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

During the preparation of this petition, the bar detected minor, non-substantive editorial errors within proposals as approved by the Board of Governors. These editorial corrections conform the rules proposed to be amended to this Court's Guidelines on Rules Submissions. These editorial corrections were not reviewed by the Board of Governors but were made in both the print and on-line versions of the official bar *News* notice and were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006. The editorial corrections are noted in the right-hand column of Appendix B and enumerated in a separate list in Appendix D.

Additionally, the Board of Governors waived first reading and official notice of taking final action on the amendments to rules 4-1.2, 14-6.1, and 20-5.2. The requirement of two readings is required by the bar's Standing Board Policy 1.60(d), but not by R. Regulating Fla. Bar 1-12.1. The requirement of notice of final Board of Governors action is required by R. Regulating Fla. Bar 1-12.1(d). The amendments were noticed for first reading in the bar *News* on April 15, 2018 and were noticed for filing with this Court on September 15, 2018.

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 Board of Governors approval for those non-substantive changes listed in Appendix D and for official notice of final Board of Governors action in the print version of the bar *News* for rules 4-1.2, 14-6.1, and 20-5.2, 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 is currently 1 pending petition involving amendments to Rules Regulating the Florida Bar filed by the bar: *In re Amendments to Rules Regulating the Florida Bar Rule 4-7.22*, Case No. SC18-881, filed June 5, 2018. The amendments in that petition are solely to R. Regulating Fla. Bar 4-7.22, there are

no amendments to R. Regulating Fla. Bar 4-7.22 proposed in this petition, and the 2 petitions may be considered independent of each another.

### **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. Non-substantive amendments to conform to this Court's Guidelines for Rules Submissions generally are not noted in Appendix B.

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.

### **No Comments Received in Response to Amendments**

No comments were received by the bar after the official notice of this petition was published in the September 15, 2018 issue of the bar *News*.

### **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 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 implement any changes approved by this Court.

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

Respectfully submitted,

/s/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902

Michelle Suskauer  
President  
Florida Bar Number 908230

John Stewart  
President-elect 2018  
Florida Bar Number 120472

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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/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902

### **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

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902