

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO RULE  
REGULATING THE FLORIDA BAR  
3-6.1

CASE NO. SC19-

**PETITION TO AMEND RULE REGULATING THE FLORIDA BAR 3-6.1**

The Florida Bar (the bar) petitions this Court for an order amending the Rule Regulating the Florida Bar 3-6.1 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.

**Amendments**

This Court requested by letter dated December 21, 2018, that the bar review rule 3-6.1 and determine whether it should be amended “to clarify prohibited conduct for suspended and disbarred attorneys that are employed by persons or entities providing legal services, including, but not limited to, the prohibitions against direct client contact and receiving, disbursing, or otherwise handling trust funds or property.” The bar asked for and received an extension until October 1, 2019. The letter granting an extension was dated March 5, 2019. Both the initial request and the letter granting an extension are attached in Appendix D. After study, the bar decided that the rule could be strengthened to provide better protection for the public in several respects.

First, the bar decided that the time limits in subdivision (b) should be removed so that suspended or disbarred lawyers would never be supervised in their employment by someone who had previously been a subordinate of the suspended or disbarred lawyer. The bar also determined that the rule should be amended to prohibit all client contact, as opposed to the current “direct” client contact in subdivision (d)(1) so that there is no confusion: suspended or disbarred lawyers employed by law firms will be permitted no contact with clients if this Court

adopts the change. After reviewing the referee report and this Court's order denying reinstatement in *The Florida Bar v. Boyles*, Case No. SC17-364 (December 21, 2018), the bar recommends, to protect the public, that suspended or disbarred lawyers employed in any capacity by law firms should not be permitted to act in any fiduciary capacity for the current or former clients of their employers, current or former clients of any entity in which their employer is a beneficial owner, or their own current or former clients. This prohibition is proposed in subdivision (d)(2).

While studying the rule and *Boyle, supra*, the bar also determined that the public could be better protected if the rule explicitly requires direct supervision of all suspended and disbarred lawyer's work by a member in good standing employed by the same law firm. Hence, the bar recommends that new subdivision (f) be added to require that individuals subject to the rule must be supervised by a member of the bar in good standing who is eligible to practice law in Florida, is employed full time by the employer, and is actively engaged in supervision of all aspects of the other lawyer's employment. Finally, the bar determined that commentary should be added to clarify what is meant by trust funds as used in the rule. Amendments to comply with this Court's Guidelines for Rules Submissions are not summarized here.

## CHAPTER 3 RULES OF DISCIPLINE

### SUBCHAPTER 3-6 EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

#### **Rule 3-6.1 GENERALLY**

*Explanation:* Within subdivision (b), removes the 3-year limitation on supervision of lawyers that the subject lawyer supervised. Within subdivision (d)(1), removes the word "direct" and explanation of "direct" describing client contact by the subject lawyer. Within subdivision (d)(2), adds information describing trust funds and a prohibition against subject lawyers acting as fiduciaries. Adds new subdivision (f) requiring active supervision of all the subject lawyer's employment activities by a Florida Bar member in good standing and eligible to practice law who is employed full time by the subject lawyer's employer. Adds commentary on trust funds and fiduciary law.

*Reasons:* This Court asked The Florida Bar, by letter of December 21, 2018, to review Rule 3-6.1 and determine whether it needs to be amended "to clarify prohibited conduct for suspended and disbarred attorneys that are employed by persons or entities providing legal services, including, but not limited to, the prohibitions against direct client contact and receiving, disbursing, or otherwise handling trust funds or property." As noted above, the bar agreed with this Court

that the rule could be clarified and public protection strengthened by the above amendments.

*Source:* Request of this Court

*Background Information – Member Commentary / Committee Action:*

- Disciplinary Procedures Committee approved 7-0 on April 24, 2019.
- Program Evaluation Committee approved 12-0 on a strategic basis on May 23, 2019.
- Board of Governors first reading on May 24, 2019.
- The bar's chief financial officer determined de minimus impact on July 3, 2019.
- Rules Committee approved 7-0 on a procedural basis on July 8, 2019.

*Board Action:* Board of Governors approved with amendments to subdivision (c) to add "who will be" before "subject to this rule" on the floor on voice vote with objection on July 19, 2019.

### **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 September 1, 2019 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:

<https://www.floridabar.org/the-florida-bar-news/proposed-amendments-to-bar-rules/>

### **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*.

## **Other Pending Amendments**

There is 1 pending petition to amend Rules Regulating The Florida Bar pending before this Court: *In re: Amendments to Rule Regulating The Florida Bar - 1-3.2*, Case No. SC19-1335. The proposed amendments within this filing are unrelated to those in the petition above 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.

This Court's original request to the bar and letter granting an extension of time to respond 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

The bar requests that any amendments 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 them.

The bar requests that this Court enter an order amending Rule Regulating the Florida Bar 3-6.1 as requested in this petition.

Respectfully submitted,

/s/ Joshua E. Doyle

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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/ Joshua E. Doyle

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Joshua E. Doyle  
Executive Director  
Florida Bar Number 25902

### **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