

APPENDIX B

SELECTED TEXT OF PROPOSED AMENDMENTS WITH REASONS FOR CHANGE

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RULES REGULATING THE FLORIDA BAR

CHAPTER 3 RULE OF DISCIPLINE

3-6 EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

RULE 3-6.1 GENERALLY

(a) Authorization and Application. Except as limited in this rule, persons or entities providing legal services may employ suspended lawyers and former lawyers who have been disbarred or whose disciplinary resignations or disciplinary revocations have been granted by the Florida Supreme Court [for purposes of this rule ~~such~~these lawyers and former lawyers are referred to as “individual(s) subject to this rule”] to perform those services that may ethically be performed by nonlawyers employed by authorized business entities.

An individual subject to this rule is considered employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor ~~providing services to the entity~~.

(b) Employment by Former Subordinates Prohibited for a Period of 3 Years. An individual subject to this rule may not, ~~for a period of 3 years from the entry of the order pursuant to which the suspension, disciplinary revocation, or disbarment became effective, or until the individual is reinstated or readmitted to the practice of law, whichever occurs sooner, be employed by or work under the supervision of another lawyer who was supervised by the individual at the time of or subsequent to the acts giving rise to the order be employed or supervised by a lawyer whom the individual subject to this rule employed or supervised before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation order.~~

(c) Notice of Employment Required. ~~Before employment commences, the~~The lawyer or entity employing any individual who will be subject to this rule must provide The Florida Bar with a notice of employment and a detailed description of the

The Florida Supreme 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.”

The bar recommends that the current prohibition against supervision by subordinates be expanded to cover supervision by anyone who was ever a subordinate to the lawyer prior to the suspension, disbarment, disciplinary resignation or disciplinary revocation order to lessen the risk that a subordinate would not be able to adequately supervise the suspended or disbarred lawyer due to the prior subordinate relationship.

intended services to be provided by the individual subject to this rule before employment starts.

(d) Prohibited Conduct.

(1) ~~*Direct-Client Contact.*~~ Individuals subject to this rule must not have ~~direct contact with any client. Direct client contact does not include the participation of the individual as an observer in any meeting, hearing, or interaction between a supervising lawyer and a client.~~

(2) *Trust Funds or Property.* Individuals subject to this rule must not receive, disburse, or otherwise handle trust funds or property as defined in chapter 5 of these rules. Individuals subject to this rule must not act as fiduciaries for any funds or property of their clients or former clients, their employer's clients or former clients, or the clients or former clients of any entity in which their employer is a beneficial owner.

(3) *Practice of Law.* Individuals subject to this rule must not engage in conduct that constitutes the practice of law and ~~such individuals~~ must not hold themselves out as being eligible to do so.

(e) Quarterly Reports by Individual and Employer Required. The individual subject to this rule and employer must submit sworn information reports to The Florida Bar. ~~Such~~ These reports must be filed quarterly, based on the calendar year, and include statements that no aspect of the work of the individual subject to this rule has involved the unlicensed practice of law, that the individual subject to this rule has had no ~~direct~~-client contact, that the individual subject to this rule did not receive, disburse, or otherwise handle trust funds or property, and that the individual subject to this rule is not being supervised by a lawyer whom the individual subject to this rule supervised within the 3 years immediately ~~previous to~~ before the date of the suspension, disbarment, disciplinary resignation, or disciplinary revocation.

(f) Supervising Lawyer. An individual subject to this rule must be supervised

To clear up any confusion regarding the term “direct client contact,” the bar recommends that the prohibition be expanded to prohibit any contact with clients so that it is very clear to both employing law firms and suspended or disbarred lawyers employed by the law firms that they suspended or disbarred lawyer may have no contact with clients.

In subdivision (d)(2), after reviewing the referee report and this Court’s order denying reinstatement in *The Florida Bar v. Boyles*, Case No. SC17-364, 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.

by a member of The Florida Bar in good standing and eligible to practice law in Florida who is employed full-time by the entity that employs the individual subject to this rule and is actively engaged in the supervision of the individual subject to this rule in all aspects of the individual's employment.

Comment

Trust funds are defined in chapter 5 of these rules and include, but are not limited to, funds held in trust for clients or third parties in connection with legal representation in escrow, estate, probate, trustee and guardianship accounts. The Supreme Court of Florida has held that lawyers acting as escrow agents have a fiduciary duty to protect the interests of all parties with an interest in the escrowed funds whether held in the lawyer's trust account or a separate escrow or fiduciary account. See, *The Florida Bar v. Marrero*, 157 So.3d 1020 (Fla. 2015); *The Florida Bar v. Hines*, 39 So.3d 1196 (Fla. 2010). Individuals subject to this rule are prohibited from receiving, disbursing, or handling trust funds or property or acting as a fiduciary regarding funds or property of the current or former clients of these individuals, the entities employing them, or any other entity in which the employer is a beneficial owner.

After reviewing the referee report and this Court's order denying reinstatement in *The Florida Bar v. Boyles*, Case No. SC17-364, the bar recommends, to protect the public, that suspended or disbarred lawyers must be directly supervised by a member of the bar in good standing who is eligible to practice law, is employed full time by the entity employing the suspended or disbarred lawyer, and is actively engaged in supervision of the suspended or disbarred lawyer regarding all of their activities in employment.

The bar recommends adding commentary providing examples of what constitutes trust funds and describing this Court's expectations regarding lawyers' fiduciary duties.