

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULE REGULATING
THE FLORIDA BAR 5-1.1(g).

Case No. SC20-1543

**FLORIDA CIVIL LEGAL AID ASSOCIATION'S MOTION FOR
LEAVE TO FILE REPLY TO THE RESPONSE FILED BY THE
TASK FORCE TO COMMENTS FILED BY INTERESTED PARTIES**

On its own behalf and with the support of the remaining commenters, the Florida Civil Legal Aid Association (FCLAA), respectfully requests this Court allow the commenters to file a reply to the Response to Comments filed by the Task Force on March 3, 2021 and states:

1. On September 15, 2020, the Task Force appointed by this Court to consider possible rule changes to Rule 5-1.1(g) of the Rules Regulating The Florida Bar filed a Report with this Court proposing various amendments to the Rule (the "Task Force Rule").

2. This Court published the Task Force Rule for comment by interested parties.

3. FCLAA and thirteen other groups filed comments. Every single commenter opposed the Task Force Rule. The comment filed by the past presidents of The Florida Bar Foundation proposed an

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alternative rule that was the result of collaboration and supported by all twelve of the in-state commenters (the “Consensus Rule”).

4. The Task Force on March 8, 2021, filed a single Response to all fourteen comments. In that response, among other things, the Task Force agreed, at least in part, to two of the many concerns raised by the commenters and, in an effort to at least partially accommodate those concerns, proposed two new changes to the Task Force Rule. Prior to doing so, it did not show the new proposed changes to any of the 14 groups that had previously filed comments. Those changes are without question now new proposed rules that no one has had a chance to comment on.

5. Additionally, the response raises other new issues that the commenters have not had the opportunity to address and makes several assertions with which the commenters disagree as a matter of fact, completeness, practicality, and/or policy. For example, while they certainly appreciate the Task Force’s agreement with two of their concerns and its willingness to propose changes to accommodate those concerns, they respectfully disagree that the proposed changes would do so and/or believe that these changes present additional (likely unintended) concerns. The Task Force’s

response makes other assertions and accusations about the Consensus Rule and about some of the commenters, including grantees of IOTA funds represented by the FCLAA, with which the commenters respectfully but firmly disagree.

6. The commenters – many of whom will be directly and materially affected by any change to Rule 5-1.1(g) – wish to be heard on the new proposals and statements by the Task Force in its response, submit that they have a due process right to be heard on these issues, and in any event, respectfully submit that the Court will benefit from being able to consider their views.

7. Most in-state commenters requested oral argument, and the Court granted their requests over the objections of the Task Force, which argued in its response that oral argument would not “meaningfully assist this Court in any way,” that the commenters were given sufficient “opportunity to present their points of views during the term of the task force’s work,” and that its response was sufficiently “cogent and clear” that the Court should “implement the proposed rule without further delay.” The commenters respectfully but strongly disagree with these assertions. In any event, oral argument is now scheduled for May 5, 2021.

8. The attorneys for the commenters that have requested oral argument and the Task Force are in the process of negotiating an agreement on the allocation of time for oral argument, as directed by the Court. The commenters have determined that (1) the opportunity to be heard at oral argument does not obviate their need to file a reply, (2) a reply would likely assist the Court in preparing for oral argument and allow for a more narrowed and efficient presentation of oral argument and faster ultimate disposition, and (3) a ruling on this request directly impacts the amount of time the commenters believe they will need and therefore would assist them in reaching an agreement with the Task Force on allocation by the April 19, 2021, deadline set by the Court.

9. The commenters are cognizant of the need to avoid delaying either oral argument or the ultimate resolution of this case and are cognizant and respectful of the Task Force's desire for any rule change to be implemented before July 1, 2021, the beginning of the next fiscal year for The Florida Bar Foundation. They do not believe that leave to file a reply would do anything to delay oral argument or disposition of this case. To the contrary, a reply may speed up the disposition by assisting the Court so that is not

hearing for the first time at oral argument the commenters' objections to the changes the Task Force has suggested to its own rule, to the Task Force's characterization of the Consensus Rule, or to other material assertions made by the Task Force for the first time in its response.

10. In an effort to maximize efficiency and best assist the Court, the FCLAA will take the lead on the proposed reply and endeavor to address the material concerns of all commenters in that reply with the hope that the other commenters may simply join the reply without the need for filing separate replies.

11. So that there will be sufficient time to prepare the reply, solicit feedback and hopefully consent from all the commenters, and especially with regard to the three commenters that are sections or committees of The Florida Bar, to provide sufficient time to go through internal processes required for approval of comments, the FCLAA proposes a deadline of no earlier than April 5, 2021. This would give the Court a full month to consider the reply in preparing for oral argument. Accounting for holidays, this would be the same thirty days that rules of procedure normally provide for responsive briefs.

12. Undersigned counsel Tom Hall and John Mills have conferred with counsel for all in-state commenters and are authorized to represent that they fully support this motion, but will not file separate motions for leave, and that they will endeavor to avoid or minimize the need to file separate replies.

13. Undersigned counsel Hall and Mills, along with Raoul Cantero, counsel for the past presidents of The Florida Bar have conferred with Mayanne Downs, the chair of the Task Force, who was joined by Elizabeth Tarbert, and are authorized to represent that the Task Force opposes the commenters filing a reply or any further comments. Ms. Downs preferred to wait to see this motion as filed before determining whether to file a response.

WHEREFORE, the FCLAA respectfully requests the Court grant leave for those who previously filed comments to file a reply to the Task Force's March 8, 2021, response no later than April 5, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by email on March 15, 2021:

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