

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
RULES REGULATING THE FLORIDA
BAR – CHAPTERS 3 AND 14

CASE NO. SC22-1293

THE FLORIDA BAR'S MOTION TO RESPOND AND RESPONSE

The Florida Bar (the bar) respectfully requests leave to respond to the Public Interest Law Section (the section) Motion to Provide Copy of Unpublished Opinion or Order and for Extension of Time to File Comments and states as follows:

The bar filed its corrected petition to amend chapters 3 and 14 of the Rules Regulating The Florida Bar on October 25, 2022.

The section filed its Motion to Provide Copy of Unpublished Opinion or Order and for Extension of Time to File Comments on November 8, 2022.

The bar has conferred with the section's representative, Mr. Anthony C. Musto, who stated that the section has no objection to the bar's motion to respond or to the bar's including the response within the motion to respond in the event this Court grants the bar's Motion to Respond.

The bar has no objection to the section's request for an extension of time.

The bar takes no position on the section's request that this Court direct the bar to provide a copy of the 1982 unpublished order, whether or not redacted, or for this Court to produce a copy of the order. This Court should note, however, that the bar has only a redacted copy of the 1982 unpublished order.

The bar seeks to respond solely to provide this Court with the context within which the 1982 unpublished order was entered.

In 1982, Florida's lawyer discipline system was largely confidential. The bar believes this is why this Court marked the order that the section seeks as "Confidential." In 1990, this Court "open[ed] the grievance process to public review." *The Florida Bar Re Amends. to Rules Regulating The Fla. Bar (Grievance Procs. & Confidentiality)*, 558 So. 2d 1008, 1010 (Fla. 1990). In 1982, Article XI, Rule 11.12 addressed confidentiality and provided that, with very limited exceptions, the lawyer discipline system was confidential:

RULE 11.12: CONFIDENTIAL NATURE OF PROCEEDINGS AND IMMUNITY

All matters including files, preliminary investigation reports, inter-office memoranda, and records of investigations are all property of The Florida Bar. All of such matters having to do with (1) investigation and other proceedings to determine probable cause, and (2) resignations pending disciplinary proceedings, shall be confidential to all parties participating therein or having knowledge thereof except as otherwise provided in these rules. All such persons shall be admonished by the agency before whom they appear to observe the confidential nature of such proceedings. Provided, however, that the confidential nature of such proceedings is subject to the following exceptions:

(1) *Public record.* Those parts of proceedings prior to the trial which are required to be served upon an accused, shall become public information in the following instances:

(a) *Request of accused or respondent.* If the accused or respondent shall file in the proceeding a request in writing that the proceedings be made public information.

(b) *Circuit Court.* If the proceeding is in a circuit court; but proceedings in contempt of confidential

proceedings shall preserve the confidentiality of the disciplinary proceeding as elsewhere provided.

(c) *Judgment of suspension or disbarment.* Upon entry of a judgment of suspension from practice, disbarment or of public reprimand.

(d) *Filing of complaint.* Upon the filing of a formal complaint by staff counsel in the Supreme Court and expiration of the time allowed for the filing of a motion to maintain confidential status as provided in rule 11.06(5)(b). Provided, however, that confidentiality shall be retained in situations where private reprimand is recommended, unless the accused or respondent waives confidentiality as provided by rule 11.12(1)(a). If a motion is filed pursuant to rule 11.06(5)(b), the matter shall remain confidential until the motion is ruled upon and thereafter as provided in the order on the motion or as otherwise provided in these rules.

(2) *Resignation pending disciplinary proceedings.* If an accused or respondent shall resign pending disciplinary proceedings which are confidential, confidentiality of the proceedings shall terminate on publication of the resignation order and the general nature of the disciplinary charges shall be stated in the resignation order. If the resigned member of The Florida Bar shall apply for readmission to The Florida Bar or for admission to the bar of any other jurisdiction, the Florida Board of Bar Examiners and the comparable body having jurisdiction of an application for admission in the other jurisdiction shall be given access to the files of The Florida Bar for the purpose of evaluating the applicant's competency to practice law.

(3) *Evidence of crime.* The confidential nature of disciplinary proceedings and the oath given to witnesses therein shall not proscribe the filing of informations and the giving of testimony before grand juries or other prosecuting authorities by individuals having knowledge of facts indicating the commission of crime.

(4) *Information concerning proceeding.* No information concerning the pendency or status of an investigation or other confidential matter shall be given unless authorized by the Supreme Court; provided, however, that any judge of a court of record having a judicial interest in the matter may be advised in confidence of the status of proceedings as to a particular accused or respondent, and provided further that a complainant may be advised in confidence of the pending status or final disposition of such complaint.

(5) In all cases where a complaint alleges a trust fund violation, there shall be a limited waiver of confidentiality to present partners, employed lawyers, P.A. shareholders, employed associates, and "Of Counsel" of the accused attorney, as determined by the designated Board reviewer. The persons notified shall be advised in confidence of the complaint.

The foregoing limited waiver of confidentiality shall be communicated by the designated Board reviewer, staff counsel, or designee to the persons to be advised, and the names and addresses of those persons advised of the complaint shall be maintained in the file. Thereafter, the designated Board reviewer, staff counsel, or designee shall furnish to such persons on their request such information pertaining to the complaint as may be reasonably necessary to prevent further trust fund violations by the accused attorney.

Copies of Article XI, Rule 11.12 from the 1981 and 1982 bar *Journal* directory issues, which contain identical verbiage to one another, are attached to this motion in Appendix A.

The bar requests that this Court grant the bar's motion to respond and accept this response.

Respectfully submitted,

/s/ Joshua E. Doyle

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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this motion 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 SERVICE

I hereby certify that a true and correct copy of this motion has been sent by e-mail to Anthony C. Musto (amusto@stu.edu; villeanddale@gmail.com) on this 15th day of November, 2022.

/s/ Joshua E. Doyle

Joshua E. Doyle
Executive Director
Florida Bar Number 25902