

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO RULES      CASE NO. SC22-1293  
REGULATING THE FLORIDA BAR –  
CHAPTERS 3 AND 14

**THE FLORIDA BAR'S RESPONSE TO COMMENTS**

The Florida Bar (the bar) respectfully provides the following response to comments filed by the bar's Public Interest Law Section as permitted by this Court's January 18, 2023 order as follows.

To the extent the section's comments suggest that the bar has authority to seek discipline of constitutional officers while they are in office, the bar wishes to clarify its practice of deferring prosecution is a decades-long practice of the bar based on the bar's understanding of its authority based on this Court's direction. The bar's deferral practice is limited to judges and those other constitutional officers who are required to be members of The Florida Bar in good standing, whose constitutional office requires them to practice law, who cannot practice law outside of that constitutional office, and for whom the constitution dictates another form of suspension or removal from office. The proposed amendments to rule 3-7.16 merely codify more clearly the bar's existing practice. Rule 3-7.16 was amended in 2000 to ensure the bar retained its ability to prosecute cases within 6 years after a constitutional officer left office specifically because the bar defers prosecution until that time. *See, Amendments to the Rules Regulating The Fla. Bar*, 763 So. 2d 1002 (Fla. 2000). Regardless of this Court's decision regarding the rule amendment at issue in this case, the bar will continue that practice until this Court makes clear to the bar that the bar has the authority to prosecute and seek discipline on the above constitutional officers while they are in office. If this Court indicates to the bar that the bar has the

authority to prosecute the specified constitutional officers while they are in office, the bar will do so.

The section also suggests that the term “constitutional officer” is vague. The bar disagrees. Read together with the comment, it is clear that the term encompasses those constitutional officers whom the constitution provides specifically for another method of their suspension or removal. Assistant state attorneys, assistant public defenders, and assistant attorneys general serve at the will of the constitutional officer who employs them and who may terminate that employment at any time. The section’s suggestion that even local and minor state officers would be included is attenuated at best, but also limited by the rule’s requirement that the constitutional officer must be required to be a Florida Bar member in good standing to hold office. Also, Florida Statutes § 112.3142 defines constitutional officers as “the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools” for purposes of that rule. Of those defined by the statute as constitutional officers, only the attorney general, state attorneys, and public defenders are required by the constitution to be members of The Florida Bar in good standing.

The section suggests adding the word “elected” before constitutional officers. The bar disagrees with that suggestion. The governor appoints constitutional officers to vacancies if less than 28 months remain in that officer’s term. *See*, Florida Constitution, Article IV, § 1(f). If the term “elected” is used, complainants will argue that the bar should prosecute the constitutional officers appointed to fill a vacancy while they hold office. The bar agrees that the state attorney and public defender for each circuit, and the Florida Attorney General, are included within the meaning of the proposed amendments. The bar disagrees that the statewide prosecutor is included; the Attorney General appoints the statewide prosecutor with no specific term of office or removal process

specified in the constitution. See Florida Constitution, Article IV, § 4(b). The bar therefore disagrees that the statewide prosecutor is covered by the proposed rule. The bar also disagrees that lawyers filling designated attorney positions on the Judicial Qualifications Commission or a judicial nominating commission are covered under the existing or proposed rule. The rule is intended to cover those constitutional officers who are required to be members of The Florida Bar in good standing, whose constitutional office requires them to practice law, who are prohibited from any practice of law outside their constitutional office, and whose suspension or removal from office is dictated by the Florida Constitution. See, *In re Investigation of Circuit Judge*, 93 So.2d 601 (Fla. 1957) [cited by the section in its comments]. There may be other ways to clarify the intent of the rule, but the bar does not believe that use of the word “elected” is the appropriate way to address the section’s concern.

The section’s suggestion that the bar is abdicating the Court’s authority and responsibility to another branch is inaccurate. The bar agrees that the power to discipline lawyers is best vested in this Court and will therefore not address the section’s arguments on this issue point-by-point. As the section itself admits, the proposed amendment (and current practice) results merely in a deferral of a bar prosecution. The bar defers prosecution because at the point disciplinary proceedings are instituted, the bar cannot predict what discipline may be imposed, as this Court is the ultimate arbiter of the appropriate sanction. See, *The Florida Bar v. Altman*, 294 So. 3d 844, 847 (Fla. 2020); *The Florida Bar v. Picon*, 205 So. 3d 759, 765 (Fla. 2016) (citing *The Florida Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989)). If the discipline is suspension or disbarment, the discipline would remove the constitutional officer’s underlying qualification to perform the constitutional office and serve as an indirect method of removal from office, creating a separation of powers concern that the section’s comments gloss over.

The bar respectfully requests that this Court grant the bar’s corrected petition and amend chapters 3 and 14 of the Rules Regulating The Florida Bar as requested in the petition.

Respectfully submitted,

/s/ Joshua E. Doyle

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## **CERTIFICATE OF TYPE SIZE AND STYLE**

I certify that this petition is in 14-point Bookman Old Style type.

/s/ Joshua E. Doyle

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Joshua E. Doyle  
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## **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](mailto:amusto@stu.edu) and [villeanddale@gmail.com](mailto:villeanddale@gmail.com)) on this 30th day of January, 2023.

/s/ Joshua E. Doyle

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