

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 03-122

**IN RE: AMENDMENTS TO RULES REGULATING THE FLORIDA  
BAR  
RE: CHAPTER 11 TASK FORCE**

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**COMMENTS ON PROPOSED AMENDMENTS**

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The Public Defender's Office for the Eleventh Judicial Circuit of Florida, through undersigned counsel, hereby submits its comments on the proposed amendments to Chapter 11 of the Rules Regulating the Florida Bar, and states:

1. The Public Defender's Office for the Eleventh Judicial Circuit of Florida is located in Miami and heavily relies upon interns that it receives

from the clinical programs run by the University of Miami, St. Thomas University, Nova Southeastern University and Florida International University. During a typical year, as many as fifty interns certified under Chapter 11 work in our Office and appear in court on behalf of our clients. The certified intern program has been a useful asset to our efforts to provide effective representation under the difficult circumstances presented by a burdensome case load. The program has also served as an essential platform for development and training of potential attorney hires. In fact, more than half of the entry-level attorneys hired by our Office come from the Office's certified intern program. Given the integral role of the certified intern program in the operation of our Office, we are greatly concerned about the proposed Chapter 11 amendments because we believe that the changes will adversely impact the program and our Office.

**1. Rule 11-1.3 (a)-** The Florida Bar's Special Board Committee to Study the Law School Practice Program has proposed amending Rule 11-1.3(a) to require that before any law student may make an appearance pursuant to Chapter 11, the student must have made application for admission to The Florida Bar and received a letter of initial clearance as to character and fitness from the Florida Board of Bar Examiners.

The proposed amendment is a commendable effort by the Committee to assure that clients represented by a certified intern receive the same type of protection that is presently afforded to Florida citizens, through the character and fitness assessment of prospective lawyers performed by the Florida Board of Bar Examiners. While we agree that a character assessment should be performed prior to certification of the law student, we think that the proposed amendment is unreasonably burdensome on the law student.

To illustrate the point, we examined the student body of the University of Miami School of Law, our largest provider of certified interns. According to the Admissions Office at Miami, two-thirds of the present student body are not residents of the State of Florida. At the time of matriculation, some of those students may have decided to reside and practice in this state upon graduation from the school. Most have not. Pursuant to the Rules of this Court Relating to Admissions to the Bar, a law student may apply for admission to the Florida Bar at a cost of \$75, if the application is filed within 180 days of the start of law school. Beyond 250 days, the fee rises to \$500. Rule 2-26.1. As a practical matter, since students are not eligible for participation in a law school practice program until they have completed two years of law school, many students do not

elect to participate in their school's clinical program until after 250 days from the start of law school have elapsed. By then, those who do decide to participate in their law school's clinical program will have to incur a \$500 expense for the privilege. Given that most law students are required to borrow substantial sums in order to meet the financial requirements of law school attendance, the \$500 fee imposed as a pre-condition for clinical participation is an undue hardship that many law students simply cannot afford to bear.

Although some character inquiry of prospective certified interns should occur, it is questionable whether the full character and fitness assessment performed by the Board of Bar Examiners is necessary before a certified intern may be deemed fit to practice under the limiting provisions of Chapter 11. Clearly, the full assessment for character and fitness performed by the Board of Bar Examiners is necessary before an attorney is admitted to the Bar, because there is nothing to insulate or protect a client from the actions of an unscrupulous lawyer. However, pursuant to the provisions of Chapter 11, the client is fully insulated and protected from potential adverse actions taken by the certified intern, because Chapter 11 requires that the intern be supervised by an admitted lawyer at every turn. See Rule 11-1.2, 11-1.6, 11-1.7. The intent of the provisions of Chapter 11

was to make the attorney's obligation to fully and properly supervise the certified intern be an inherent part of the attorney's obligation to zealously and effectively represent the client. Under those circumstances, we submit that it is not necessary to subject the certified intern to the same character and fitness scrutiny as a prospective attorney.

Rather than the amendment proposed by the Bar's Special Board Committee, we suggest that the prospective certified intern be required to make a sworn disclosure of any prior event or act that might adversely reflect upon the applicant's character and fitness to serve as a certified intern. In addition, the applicant should be required to submit to the Court a prior arrest report from FDLE, that can be obtained by the applicant at a cost that is generally less than \$100. Those submissions, in our judgment, should be sufficient to allow the Court to make a determination as to whether the prospective certified intern possesses the requisite character and fitness to perform the duties required under Chapter 11.

**2. Rule 11-1.9(c)-** The Florida Bar's Special Board Committee to Study the Law School Practice Program has proposed amending Rule 11-1.9©) to provide for the termination of certification of a law school graduate who has failed any portion of the Florida Bar Examination. The amendment is a significant change. The present version of the rule permits a law school

graduate to be certified for a period of twelve months from graduation, as long as the graduate has not failed to take the next available Florida Bar Examination and has not been denied admission to the Florida Bar. The proposed amendment will have an extremely adverse impact upon our Office's ability to attract qualified attorneys and will result in a reduction in the quality of services that our Office can provide our clients.

Although the size of our Office's legal staff is subject to fluctuation, at present, we employ approximately 190 attorneys. Given our relatively low salaries, the size of the student loan debt that is borne by graduating attorneys, and the transient nature of the population in Florida, our attorney turnover rate is approximately 10-15% per year. It is therefore common for us to have to find and hire as many as twenty new lawyers each year. Our experience has been that it is not possible to find that number of qualified candidates solely from students graduating from Florida law schools. As a consequence, it has been necessary to supplement our recruiting efforts by going outside the State of Florida.

In its present state, Rule 11-1.9(c) provides for the continuation of a law graduate's certification for one year after graduation. That year is an important period in the development of a young lawyer. After taking the bar exam in July, a hired graduate in our Office begins employment during the

first week in August. The graduate participates in our week-long orientation program and then begins a year-long extensive training period, where the graduate accumulates valuable practical experience and learns the craft of trial advocacy, while under the tutelage of experienced lawyers. Should the graduate fail the bar exam on the first attempt, a second opportunity is still available within the one year period provided for by the present rule. That second opportunity allows a governmental office like ours a second chance to reap a return on our investment of taxpayer dollars in the training of the law school graduate. It has been our experience that more than 90% of our hired graduates pass the bar and are admitted within the one-year period provided for in Rule 11-1.9(c).

Should the amendment proposed by the Committee be approved, that period would be effectively cut to six weeks. As indicated earlier, although the extended certification period actually begins upon graduation, as a practical matter, our hired graduates do not utilize that extension until they begin employment with us during the first week of August. Since results for the July Bar Examination are generally posted in mid-September, a failure on that examination will result in termination of the graduate's certification six weeks after beginning employment. Due to the budgetary constraints under which we and most governmental offices operate, that termination

likely will result in the termination of the graduate's employment. We simply cannot afford to pay a lawyer's salary to a graduate who is precluded from appearing in court pursuant to the provisions of the amended Chapter 11.<sup>1</sup>

There is also a ripple effect from the amendment that will have a negative impact upon our Office and the criminal justice system. Based upon the circumstances described above, recruiting out-of-state law school graduates will become far more difficult, if not impossible. Most out-of-state graduates would not wish to incur the expense of relocating to Florida on the promise of employment that may only last six weeks if they are unsuccessful on the Florida Bar Examination. As a consequence, to fill that void and to maintain our legal staff at levels necessary to meet the needs of our clients, our Office will be forced to hire Florida graduates who may not meet our standards for professional competence. At best, the training effort that will be required to raise the graduates' level of competence to

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<sup>1</sup> The amendment would exacerbate an already impossible situation for our Office. In the past session, the Legislature approved funding for the creation of two new circuit judges for the Eleventh Circuit. Unfortunately, the Legislature provided our Office with no additional funding to staff these courts and to handle the increased workload to be generated by their creation. With these new resources, the Eleventh Circuit plans to create three additional courts - one new criminal division and two new repeat offender courts. At present, this Office is unable to effectively staff the courts as planned by the Eleventh Circuit.

acceptable standards will further drain our already limited resources. At worst, the Office could be forced into the unwanted position of providing less than competent representation to our clients, which will likely increase the financial burden to the State through the cost of post-conviction litigation.

The amendment may also adversely impact our Office's efforts to maintain the diversity of our staff. Although we do not presently have long-term empirical data to support this position, the results from the July, 2005, examination provide some evidence that the amendment of Rule 11-1.9(c) could well have that impact. The Office had twenty certified interns sit for the July, 2005 examination. Eight of the interns were minority graduates. All twelve non-minority graduates passed the examination. Five of the eight minority graduates failed. Under the amendment proposed by the Committee, the five certified interns who failed the examination would have their certifications terminated and due to our financial condition, would likely lose their employment. Without a change, those candidates would have a second opportunity to pass the exam. As stated earlier, more than 90% of our certified interns, including minority candidates, pass the exam by the end of their one-year post-graduate certification period. Since our Office and the Florida Bar fervently support the maintenance of cultural diversity in

Bar membership, we maintain that the proposed amendment of Chapter 11-1.9(c) should not be approved.

Respectfully submitted,

Bennett H. Brummer  
Public Defender  
1320 NW 14 Street  
Miami, FL 33125  
(305) 545-1600

BY:

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RORY S. STEIN  
General Counsel  
Florida Bar No. 259594

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail to John F. Harkness, Jr., Executive Director of the Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, and William P. White III, Chairman of the Chapter 11 Task Force, 25 North Market Street, Suite 200, Jacksonville, FL 32202-2802, this \_\_\_\_\_ day of September, 2005.

BY:

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RORY S. STEIN

**CERTIFICATE OF FONT**

Undersigned counsel certifies that the type used in this comment is 14 point proportionately spaced Times New Roman.

BY:

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RORY S. STEIN