

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR

CASE NO.

PETITION TO AMEND THE RULES REGULATING THE FLORIDA

BAR THE FLORIDA BAR, pursuant to rule 1-12.1, Rules Regulating The Florida Bar, hereby petitions this court for an order amending the Rules Regulating The Florida Bar and states:

I

1. This petition has been authorized by the Board of Governors of The Florida Bar.
2. The amendments and action proposed herein were specifically approved by the Board of Governors of The Florida Bar.

II

3. The bar proposes amendments to existing rules as shown in the listing that follows. Each entry additionally reports common categories of information as specified in this court's guidelines for bar rules amendments: *i.e.*, an explanation of

each amendment; reasons for any changes; the sources of any proposal; names of groups or individuals who commented or collaborated during the rule development process; voting records of pertinent committees and the bar's governing board; and, dissenting views, if any, regarding such proposals.

Chapter 6. Legal Specialization And Education Programs
Subchapter 6-12. Basic Skills Course Requirement

Rule 6-12.3 Requirement

Explanation: Regarding the course components of the basic skills course requirement in subdivision (a), codifies that the Practicing with Professionalism program shall be 1 day in length, and increases the number of basic elective continuing legal education programs, from 2, to 3; regarding the time for completion of the basic skills course requirement in subdivision (b), increases the time for advance completion of the Practicing with Professionalism program, from 8, to 12 months prior to admission to The Florida Bar; conforms other references to basic CLE requirement in subdivision (b) to reflect the proposed change in (a) consistent with related amendments proposed for rule 6-12.4.

Reasons: Reflects that the Practicing with Professionalism program has been refined from a 2-day program on multiple topics to a 1-day program on professionalism; increases the number of basic level substantive courses.

Source: Young Lawyers Division (YLD).

Commentary / Collaboration: The YLD provided specific notice to sections of the bar and interested lawyer organizations. The Government Lawyers Section provided substantial commentary on the proposed rule changes, ultimately collaborated with the YLD to finalize the proposed rule changes, and now agrees to the proposed amendments. No substantial comments were received to the proposed amendments to this rule.

Committee Action: Developed and sponsored by the Young Lawyers Division executive committee; favorably reported by 35-0 vote of the YLD Board of Governors on May 16, 2003; on August 21, 2003 meeting agenda of The Florida Bar Board of Governors for informational purposes; favorably reported by unanimous vote of Board of Legal Specialization and Education (BLSE) on September 5, 2003; referred by BLSE to Program Evaluation Committee (PEC) for review; favorably reported by 7-0 vote of PEC on September 25, 2003; on October

3, 2003 meeting agenda of The Florida Bar Board of Governors for first reading; favorably reported by 5-0 roll call vote of Rules Committee on November 3, 2003; on December 5, 2003 meeting agenda of The Florida Bar Board of Governors for final action.

Florida Bar Board of Governors Action: Favorably reported by voice vote on December 5, 2003.

Dissent: None noted.

Rule 6-12.4 Deferment and Exemption

Explanation: Consistent with related amendments proposed for rule 6-12.3, substantial editorial reorganization of the rule to reflect elimination of the government lawyer deferment from the Practicing with Professionalism course program; adds a requirement for members to provide written notice to the bar of the expiration date of their deferment; restructured rule otherwise maintains the current government lawyer deferment from the basic elective CLE course requirement; adds an exemption from the basic elective CLE course requirements for lawyers employed by government agencies for 6 years or more.

Reasons: Eliminates the deferment for government lawyers to ensure that all new lawyers receive a uniform introduction to the concepts of professionalism as soon as they become members of the bar. Requires written notification for expiration of a deferment to assist the bar in making sure that all members timely complete their basic skill course requirements. Also adds an exemption from attendance at basic level CLE courses for all lawyers who have been employed by a government agency for 6 years or more.

Source: Young Lawyers Division (YLD).

Commentary / Collaboration: The YLD provided specific notice to many sections of the bar and interested lawyer organizations. The Government Lawyers Section provided extensive commentary, ultimately collaborated with the YLD to revise the proposed rule changes, and now agrees to the proposed amendments. The City, County and Local Government Law Section advised that it does not object to the elimination of the government lawyer deferment for the Practicing with Professionalism course. Florida's Attorney General advised that his office has no objection to the proposed amendments. The Florida Public Defenders Association provided commentary and initially objected to the proposed rule changes. However, once presented with the final rule, which was agreed to by the Government Lawyers Section, the Florida Public Defenders Association withdrew its objections. The YLD received comments from the Florida Prosecuting Attorneys Association objecting to the elimination of the deferment for government

lawyers from the Practicing with Professionalism course. The Florida Prosecuting Attorneys Association stated that the association conducts its own training programs throughout the state, and that each circuit has its own programs dealing with education for their attorneys, which emphasize prosecutorial professionalism. The association also asserted that Florida's prosecutors have extraordinary case loads and are compensated below the pay grade of the average young lawyer in Florida. In the December 5, 2003 vote of The Florida Bar Board of Governors, 2 board members opposed the elimination of the deferment for government lawyers, reciting the same grounds set forth by the Florida Prosecuting Attorneys Association.

Committee Action: Developed and sponsored by the Young Lawyers Division Executive Committee; favorably reported by a 35-0 vote of the YLD Board of Governors on May 16, 2003; on August 21, 2003 meeting agenda of The Florida Bar Board of Governors for informational purposes; favorably reported by unanimous vote Board of Legal Specialization and Education (BLSE) on September 5, 2003; referred by BLSE to Program Evaluation Committee (PEC) and Rules Committee; on October 3, 2003 meeting agenda of The Florida Bar Board of Governors for first reading; additional language for governmental employee exemption added by YLD and approved by 7-0 vote of PEC on September 25, 2003; on October 3, 2003 meeting agenda of The Florida Bar Board of Governors for first reading; favorably reported by 5-0 roll call vote of Rules Committee on November 3, 2003; on December 5, 2003 meeting agenda of The Florida Bar Board of Governors for final action; re-submitted to The Florida Bar Board of Governors on April 2, 2004 due to error in proposal considered at December 5, 2003 meeting.

Florida Bar Board of Governors Action: Favorably reported by voice vote on December 5, 2003; corrected submission favorably reported by voice vote on April 2, 2004.

Dissent: Two known dissenting votes, as noted above, on December 5, 2003; no dissent noted in April 2, 2004 action.

III

4. A formal notice containing the full text of these proposed amendments was first published in the January 1, 2004 issue of *The Florida Bar News*. A

corrected notice was subsequently published in the April 30, 2004 *News* edition. Photocopies of the corrected and original notification are included with this petition, at Appendix A.

IV

5. The complete text of the proposed amendments herein is additionally included in Appendix B to this petition, followed by a separate 2-column presentation within Appendix C, which includes extracted text of affected rules, proposed amendments thereto, and an abbreviated recitation of the reasons for such changes as more fully expressed further in this petition.

V

6. Appendix D includes, in chronological order, copies of pertinent communications transmitted or received during the process when these proposals were developed. Only proposals to eliminate the deferment for government lawyers' attendance at the Practicing with Professionalism course drew any commentary from within the membership of the bar. No other component of this submission generated any comment.

7. To further address the issues raised in opposition to the elimination of the deferment for government lawyers' attendance at the Practicing with Professionalism course and to present a more fully developed record from which

this court might better consider these proposals, the bar provides expanded discussion related to those suggested changes. That presentation follows, within the next subpart of this petition.

VI

8. The proposed amendments reflect the Young Lawyers Division's ongoing and continuing efforts over the past few years to make the Practicing with Professionalism course more beneficial to all young lawyers. The Young Lawyers Division proposed amendments to the rules governing the Practicing with Professionalism course in 1999 and petitioned this court to approve the amendments. That petition proposed the elimination of the right of government lawyers to defer attendance at the Practicing with Professionalism course. The petition drew strong objection from the Government Lawyers Section and other interested groups. Rather than have a divisive dispute among multiple sections of The Florida Bar, the Young Lawyers Division withdrew its proposal to allow it to refine the Practicing with Professionalism course and begin an extensive dialogue with the government lawyers and other interested groups.

9. Since withdrawing its 1999 proposal, the Young Lawyers Division has made numerous changes to the Practicing with Professionalism program in furtherance of its ongoing oversight responsibility. Among the changes to the

program, the YLD has made the course a 1-day program with specific emphasis on professionalism and ethics components. Much of the criticism directed at the course was that it contained too much substantive material that was inapplicable to many lawyers' practices, particularly the practice of government lawyers. In reducing the program to 1 day, the new course eliminated substantive course materials and refocused the professionalism and ethics portions to apply to all new lawyers – regardless of their area of practice.

10. In response to the YLD's 1999 proposed amendments, which would have eliminated the right of government lawyers to defer attendance at the Practicing with Professionalism Program, the government lawyers who registered objections raised concerns in 2 areas – expense and time away from the practice. By reducing the program to a 1-day course, the cost of the program is also reduced, as is the amount of time that lawyers are required to be out of their offices to attend the course during their first year of practice. The new program's content is uniform, in that the material is presented in the same manner throughout the state in 8 different locations, 13 times a year, and applies generally to all areas of practice. Finally, the overall program is designed to focus on professionalism and ethics during the 1-day course, while permitting new members of the bar the autonomy to select the substantive basic-level course of their choosing during their

first 3-year CLER reporting cycle.

11. In response to a recommendation of the bar's Program Evaluation Committee, in April 2003 the Young Lawyers Division proposed the amendments herein. The Government Lawyers Section initially reiterated their opposition to the elimination of the deferment for government lawyers' attendance at the Practicing with Professionalism course. As occurred in 1999, the Government Lawyers Section initially claimed that the substance of the program was not applicable to government lawyers, that it was too burdensome for government lawyers to be out of the office, and that government lawyers had a difficult time paying for the course. The Young Lawyers Division explained the changes that had been made to the Practicing with Professionalism program, including such points as: the content is now applicable to all areas of practice (including government lawyers); the program eliminated materials relating to the substantive areas of law and is now limited to professionalism and ethics; it only requires 1 day out of the office; and the cost of the program is substantially reduced from \$190 per person, to now \$135 per person.

12. The YLD thereafter worked with the Government Lawyers Section to modify the rule. One material addition to the proposed amendments requested by the Government Lawyers Section was an exemption from attendance at the basic

level courses for any government lawyer continuously employed by a government agency for 6 years or more.

13. Despite the collaborative efforts reached with the Government Lawyers Section – and the fact that the City, County and Local Government Law Section, Criminal Law Section, the Council of Sections, Florida’s Attorney General, and the Florida Public Defender’s Association do not oppose the proposed amendments – the Florida Prosecuting Attorneys Association maintains its same opposition to eliminating the deferment for government lawyers.

14. The Prosecuting Attorneys Association objects to the proposal to the extent that it requires prosecuting attorneys to attend the 1-day Practicing with Professionalism course. The association cites 3 grounds for its opposition. First, the association suggests that the association and/or local prosecutor offices around the state offer programs that are sufficient to meet the requirements of the Practicing with Professionalism course. Second, the association suggests that its attorneys’ workloads are too high to permit them to be out of the office 1 day to attend the Practicing with Professionalism course. Finally, the association suggests that its attorneys are very much below the pay grade of the average young lawyer in Florida, making the expense too burdensome for young prosecutors.

15. With respect to the first objection, the Practicing with Professionalism

course is now applicable to all areas of practice, including prosecuting attorneys who spend a considerable amount of time in court. The program is designed to provide the material in a uniform way to all new lawyers to avoid any deficiencies that may arise due to differences in law school education, continuing legal education courses, and practice areas.

16. The Florida Bar has a compelling interest in informing all of its new members vital information and explanations necessary for the practice of law in Florida. No area of practice should be excepted from attending the course or, worse, permitted to present its own professionalism course in place of the YLD's course, because such an exception would encourage other sections and substantive areas of practice to seek to create their own program. Such segregation of areas of practice would fragment the bar and conflict with this court's mandate in rules 6-12.1 and 6.12.2, which implicitly direct the Young Lawyers Division to implement a uniform program. Furthermore, in order for our government lawyers to get the best training possible in the area of professionalism, it is imperative that they hear the different views of lawyers who do not practice within the governmental sector, and that lawyers who don't practice with a governmental agency have the benefit of hearing the views of governmental lawyers on matters of professionalism.

17. In keeping with the professionalism movement, the Young Lawyers

Division specifically designed the new 1-day course to foster a community of professionalism which transcends practice areas. This community atmosphere would be incomplete if young lawyers were not able to interact with government young lawyers and *vice versa*. The interactive components of the Practicing with Professionalism program need input from all practicing lawyers to be most effective. This includes the views of governmental lawyers.

VII

18. As noted, these proposed changes to the bar's Practicing with Professionalism program were the product of extended negotiations, primarily between the Young Lawyers Division and the Government Lawyer Section of The Florida Bar. Those discussions essentially culminated in an October 30, 2003 letter to Mark Romance, president of the Young Lawyers Division, from Keith Rizzardi, chair of the Government Lawyer Section (*see* Appendix D) which highlighted the final agreement between these groups and reflects the efforts made to balance the various interests involved with this issue.

19. To memorialize the accommodations agreed to by the bar in its future administration of these rule changes, a comment for rule 6-12.3 is proffered for adoption by this court and for implementation upon the effective date of these amendments. The suggested commentary essentially recites the concepts set forth

in Rizzardi's letter to Romance, which discussed how government lawyers would be scheduled to attend Practicing with Professionalism (PWP) courses in the future:

- Government lawyers who currently benefit from the deferral of the PWP requirement would still be entitled to the deferral
- Lawyers now deferred from PWP who serve, or have already served, 6 years or more in public service, and who obtain the applicable ethics and professionalism CLE credits, would be wholly exempt from PWP
- All government lawyers, present and future, would continue to be entitled to defer attendance at the basic level CLE courses otherwise required by rule
- In addition, lawyers who stay in government practice for 6 years or more will be wholly exempt from basic CLE requirements

20. These temporary and transitional matters do not seemingly merit formal codification as rule text, but are otherwise pertinent for publication in order to ensure proper bar administration and necessary lawyer understanding of the other more lasting universal changes in PWP programming. The suggested commentary language is tendered in a fill-in-the-blank format, for the court to insert the appropriate implementation date for these rule amendments once approved.

VIII

21. There is 1 other matter presently before this court that seeks additional amendments of the Rules Regulating The Florida Bar: *Amendments to The Rules Regulating The Florida Bar and the Rules of Judicial Administration*, (Case No. 04-135) filed on February 9, 2004 and relating to the multijurisdictional practice of law. The amendments offered within the instant petition are unrelated to this pending action, do not affect any rules at issue therein, and may be considered independent of that other filing.

IX

22. Based on comments already received in opposition to the proposed rule amendments herein, the bar requests oral argument of the matters within this petition.

X

23. And, in anticipation that additional comments may be filed in response to the instant petition, The Florida Bar requests leave to file 1 reply to all such commentary, no later than 20 days after the 30-day period for comment has expired pursuant to R.RegulatingFla.Bar 1-12.1(g) following the filing of this petition.

WHEREFORE, The Florida Bar prays this court will enter an order amending the Rules Regulating The Florida Bar in the manner sought herein.

Respectfully submitted,

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June 1, 2004

CERTIFICATE OF TYPE SIZE AND STYLE

THE FLORIDA BAR HEREBY CERTIFIES that this petition is typed in 14 point
Times New Roman Regular type.