

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC

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 with the exception of those additional revisions discussed in section V of this filing. .

II

3. The bar proposes new rules or amendments to existing rules as primarily

indicated in the listing below. 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 within the board, if any, regarding such proposals.

4. Some rules herein include several proposed revisions that were considered at different meetings or as individual matters by the Board of Governors of The Florida Bar during the amendatory process. If that occurred, those various amendments are reported as separate items to better reflect the distinctive aspects of their development.

III

Chapter 1 General
Subchapter 1-3 Membership
Rule 1-3.5 Retirement

Explanation: Deletes requirement of board review and approval of petitions for retirement and for reinstatement therefrom; authorizes executive director to individually act on most of such matters instead, but still allows for board action in cases of doubt; clarifies that denial of a petition for retirement or reinstatement by either authority may be reviewed by petition to the Supreme Court of Florida.

Reasons: Reduces the use of board resources for the essentially ministerial aspects of the retirement and reinstatement processes; allows for action by board of governors in instances where there is otherwise doubt at executive staff level as to

appropriate action.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee discussed and approved by vote of 4-0 on October 14, 2004; Rules Committee favorably reported by voice vote of 6-0 on November 22, 2004 conference call.

Board Action: Waiver of second reading approved by Board of Governors by voice vote on December 10, 2004; amendment approved by Board of Governors by voice vote on December 10, 2004.

Board Dissent:

Rule 1-3.6 Delinquent Members

Explanation: Reorganized and rewritten to consolidate and more clearly specify those instances in which a member shall be deemed delinquent; includes selected language moved from rule 1-7.3(a) and adds failure to pay fees associated with a fee arbitration award as a specific basis for delinquency.

Reasons: Consolidates and clarifies pertinent provisions regarding membership delinquency within one rule.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee discussed and approved by vote of 4-0 on October 14, 2004; Rules Committee favorably reported by voice vote of 6-0 on November 22, 2004 conference call; Board of Governors referred back to Disciplinary Procedure Committee and Rules Committee at the December 10, 2004 meeting; Disciplinary Procedure Committee approved edits; Rules Committee approved edits by special fax/e-mail vote of 4-0 on December 14, 2004.

Board Action: On December 28, 2004, the Executive Committee of the Board of Governors voted, without dissent, to approve the referenced rule as passed by the Disciplinary Procedure Committee, but ratification of which was delayed at the December 8, 2004 board meeting.

Dissent: None.

Rule 1-3.8 Right to Inventory

Explanation: Creates new subdivision (e) to require each member of the bar who practices law in Florida to designate another member who is willing to serve as inventory attorney in the event of any need for such. Clarifies that the

designated member is under no obligation to serve as an inventory attorney, and that the designated member will be contacted at the time of need to determine their current willingness and ability to serve.

Reasons: Provides a more ready source of inventory attorneys for Florida lawyers if the need were ever to arise in their individual practices. Formalizes the exercise of the ongoing professional duty of members of the bar to protect their clients' rights, but seeks to accommodate the personal wishes of every member should their files ever need to be inventoried in the future – by allowing the member to specify their preferred inventory attorney, but without irrevocably obligating the specified member. Advance designation of inventory attorneys allows for timely action when the need is evident. The experience of the bar has been that, frequently there is difficulty in locating a volunteer inventory attorney at the critical time when timely action is needed to protect the rights of clients. This proposal should increase the opportunity to timely intervene with such protection in many cases.

Source: Disciplinary Procedure Committee

Commentary/Collaboration: None

Committee Action: Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on November 13, 2003; Disciplinary Procedure Committee favorably reported by a voice vote of 5-0 on further amendments, on December 4, 2003; Rules Committee favorably reported by voice vote of 5-0 on January 6, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on January 30, 2004.

Dissent: None

Subchapter 1-7 Membership Fees and Fiscal Control

Rule 1-7.3 Membership Fee

Explanation: Consistent with proposed changes in rule 1-3.6, deletes language in subdivision (a) relating to membership delinquencies, to be relocated in rule 1-3.6; deletes other verbiage in (a), to effectively allow the bar to accept membership fees from delinquent members.

Reasons: Removes redundant language that has the potential for inconsistency with verbiage in rule 1-3.6; deletions also would effectively allow the bar to accept membership fees from delinquent members, presently prohibited by subdivision (a), but without affecting delinquency.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee discussed and approved by vote of 4-0 on October 14, 2004; Rules Committee favorably reported by voice vote of 6-0 on November 22, 2004 conference call.

Board Action: Board of Governors approved by voice vote on December 10, 2004.

Dissent: None.

Chapter 3 Rules of Discipline

Subchapter 3-2 Definitions

Rule 3-2.1 Generally

Explanation: Within subdivision (n), revises definition of “staff counsel” to specify a lawyer employee of The Florida Bar designated by the executive director and authorized by the rules to approve formal complaints, conditional guilty pleas for consent judgments, diversion recommendations, and to make appointment of bar counsel.

Reasons: Allows the executive director flexibility to designate the appropriate individual rather than rigidly fixing such designation by court rule. In the absence of such an amendment, if the individual occupying the defined position is temporarily unavailable, a change in employment assignments is necessary to accommodate the requirements of the rule as now written.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by a voice vote of 6-0 on April 3, 2003; Rules Committee favorably reported by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee reaffirmed by voice vote of 6-0 on November 3, 2003; on May, August, and October 2003 Board of Governors meeting agendas for further consideration.

Board Action: Board of Governors approved on consent calendar on December 5, 2003.

Dissent: None.

Subchapter 3-3 Jurisdiction to Enforce Rules

Rule 3-3.4 Grievance Committees

Explanation: Within subdivision (d), states that a committee member whose term has expired may nevertheless participate in the disposition of cases pending at the time that member’s term expires, but shall not be counted as a committee

member for purposes of calculating the minimum required number of public members on the committee.

Reasons: Clarifies bar preferences as to the status of any grievance committee member who may be needed and who might care to hold over and complete the disposition of pending matters. Makes efficient use of seasoned volunteer resources without otherwise affecting a committee's preferred mix of lawyer and public membership.

Source: Bar Staff and Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by a vote of 4-0 on July 22, 2003; Rules Committee favorably reported by voice vote of 5-0 on November 3, 2003.

Board Action: Board of Governors approved on consent calendar on December 5, 2003.

Dissent: None.

Subchapter 3-5 Types of Discipline

Rule 3-5.1 Generally

Explanation: This is first of two different groups of proposed amendments to this rule. Within subdivision (c), clarifies that a failure to comply with terms of probation or a finding of probable cause for misconduct during probation may be prosecuted as contempt and processed as other contempt proceedings elsewhere in bar rules; additionally confirms that any order of sanctions for contempt hereunder may also terminate probation previously imposed.

Reasons: Clarifies that violations of probation are matters of contempt and are processed as are other contempts under rule 3-7.11(f); effectively changes the automatic termination of probation upon certain events, to permissive termination.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration:

Committee Action: Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on November 13, 2003; Rules Committee favorably reported by voice vote of 5-0 on January 6, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on January 30, 2004.

Dissent: None.

Rule 3-5.1 Generally

Explanation: This is second of two different groups of proposed amendments to this rule. Consistent with proposed changes in rules 3-6.1, 3-7.2, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” revises the term “disciplinary resignation” throughout subdivisions (g) & (j), to read “disbarment on consent”; additionally within (j), streamlines verbiage to reflect that disbarment by consent shall have the same effect as – and shall be governed by the same rules regarding – disbarment, and that matters involving disbarment by consent shall be processed in the same manner as conditional guilty pleas for consent judgment under rule 3-7.9.

Reasons: Change in terminology based on a desire by the Board of Governors to reduce confusion outside the legal profession over the difference between disbarment and disciplinary resignation, and their similar effects on the licensure of a member.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None

Committee Action: Disciplinary Procedure Committee favorably reported terminology "disciplinary revocation by consent" by voice vote of 6-0 on April 3, 2003; Disciplinary Procedure Committee reviewed further based upon staff input; Disciplinary Procedure Committee voted to reconsider terminology to "disbarment on consent" on July 22, 2003, by a vote of 4-0; Disciplinary Procedure Committee favorably reported revised rules by a vote of 4-0 on September 23, 2003; Rules Committee favorably reported initial amendments by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee favorably reported subsequent amendments by voice vote of 5-0 on November 3, 2003 conference call; on May, October, and December 2003 Board of Governors meeting agendas with no action taken.

Board Action: Board of Governors approved by voice vote on January 30, 2004.

Dissent: None.

Subchapter 3-6 Employment of Certain Attorneys or Former Attorneys

Rule 3-6.1 Generally

Explanation: Consistent with proposed changes in rule 3-5.1, 3-7.2, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” adds attorneys who have been “disbarred on consent” within subdivision (a) as individuals subject to this rule.

Reasons: Change in terminology based on a desire by the Board of Governors to reduce confusion outside the legal profession over the difference

between disbarment and disciplinary resignation, and their similar effects on the licensure of a member.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None

Committee Action: Disciplinary Procedure Committee favorably reported terminology "disciplinary revocation by consent" by voice vote of 6-0 on April 3, 2003; Disciplinary Procedure Committee reviewed further based upon staff input; Disciplinary Procedure Committee voted to reconsider terminology to "disbarment on consent" on July 22, 2003 with a vote of 4-0; Disciplinary Procedure Committee favorably reported revised rules by a vote of 4-0 on September 23, 2003; Rules Committee favorably reported initial amendments by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee favorably reported subsequent amendments by voice vote of 5-0 on November 3, 2003 conference call; on May, October, and December 2003 Board of Governors meeting agendas with no action taken.

Board Action: Board of Governors approved by voice vote on January 30, 2004.

Dissent: None.

Subchapter 3-7 Procedures

Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct

Explanation: This is the first of three different groups of proposed amendments to this rule. Within subdivision (f)(1), adds language stating that a petition to modify or terminate a suspension due to criminal conviction may only challenge the jurisdiction of the court or the validity of the criminal proceedings due to a denial of lack of due process.

Reasons: Rule 3-7.2(i)(2) provides that a criminal judgment or a withhold in felony cases is conclusive proof of criminal conduct for purposes of this rule. With increasing frequency, respondents are using this rule to launch collateral attacks on the facts of their criminal cases. Subdivision (f) is intended to be injunctive in nature; more permanent discipline is sought by follow up action pursuant to subdivision (i). The proposed amendment would restrict the types of challenges that could be brought at the injunctive level, but would not limit consideration of other issues in subsequent proceedings under the rule.

Source: Bar Staff and Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004; Rules Committee favorably reported by voice vote of 5-0 on May 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Dissent: None.

Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct

Explanation: This is the second of three different groups of proposed amendments to this rule. Consistent with proposed changes in rules 3-5.1, 3-6.1, 3-7.10, and 3-7.12 which formalize the concept of “disbarment on consent,” revises verbiage within subdivision (j)(1) to reflect discontinuation of the term “disciplinary resignation.”

Reasons: Change in terminology based on a desire by the Board of Governors to reduce confusion outside the legal profession over the difference between disbarment and disciplinary resignation, and their differing effects on the licensure of a member.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported terminology "disciplinary revocation by consent" by voice vote of 6-0 on April 3, 2003; Disciplinary Procedure Committee reviewed further based upon staff input; Disciplinary Procedure Committee voted to reconsider terminology to "disbarment on consent" on July 22, 2003 with a vote of 4-0; Disciplinary Procedure Committee favorably reported revised rules by a vote of 4-0 on September 23, 2003; Rules Committee favorably reported initial amendments by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee favorably reported subsequent amendments by voice vote of 5-0 on November 3, 2003 conference call; on May, October, and December 2003 Board of Governors meeting agendas with no action taken.

Board Action: Board of Governors approved by voice vote on January 30, 2004.

Dissent: None.

Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct

Explanation: This is the third of three different groups of proposed amendments to this rule. Elsewhere within subdivision (j), creates a new subdivision (3) to provide a process for interim suspension when a member has submitted a disciplinary resignation or otherwise surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state, or by a federal court.

Reasons: These amendments address the circumstances where a member forfeits a law license for disciplinary reasons in another jurisdiction but retains a Florida license. Current rules do not provide a fast path for protection of the public. The bar submits that it is inappropriate for a member who has lost a bar license because of misconduct in other jurisdictions to remain eligible to practice in Florida if due process was afforded that member with regard to their loss of licensure in the other jurisdiction.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by a vote of 3-0 on July 22, 2003; Rules Committee favorably reported by voice vote of 5-0 on November 3, 2003.

Board Action: Board of Governors approved on consent calendar on December 5, 2003.

Dissent: None.

Rule 3-7.4 Grievance Committee Procedures

Explanation: Within subdivision (l), alters the requirement that the presiding officer of a grievance committee sign a formal complaint, to only require that the document be “approved” by such officer.

Reasons: The time required to send draft complaints to grievance committee chairs, and to receive the signed copy in return is sometimes substantial. Sometimes, copies are lost. There have been very few concerns raised by committee chairs regarding the drafting or content of complaints. This proposed amendment preserves review by a committee chair, but eliminates the time required for the signing and mailing of actual documents to the bar.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on December 4, 2003; Rules Committee favorably reported by

voice vote of 5-0 on January 6, 2004 conference call; Rules Committee reaffirmed voice vote of 5-0 on March 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on April 2, 2004.

Dissent: None.

Rule 3-7.6 Procedures Before a Referee

Explanation: Within subdivision (m)(2), deletes the requirements that the referee serve a copy of the record on bar counsel with the report, and that bar counsel make such copy available to other parties on request upon payment of the cost of reproduction.

Reasons: Would eliminate a redundant and seemingly unnecessary requirement. Current provisions require that a referee serve a copy of the referee's report and record on bar counsel, and that bar counsel furnish a copy of the record to other parties upon payment of the cost of reproduction. The amendment would delete those requirements because the parties should already possess a copy of the record.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Disciplinary Procedure Committee; Disciplinary Procedure Committee favorably reported by a vote of 3-0 on July 22, 2003; Rules Committee favorably reported by voice vote of 5-0 on November 3, 2003.

Board Action: Board of Governors approved on consent calendar on December 5, 2003.

Dissent: None.

Rule 3-7.9 Consent Judgment

Explanation: Within subdivision (a), conforms the authority of disciplinary staff regarding consent judgments before a formal complaint is filed, to their authority after a complaint is filed – as reflected in subdivision (b) – by changing references to "staff" counsel, to read "bar" counsel; within subdivision (e), deletes redundant references to staff counsel's authority and retitles subdivision to read "Effect of Pleas on Certification" to more clearly reflect its content.

Reasons: Current rule language suggests that only staff counsel may file documents evidencing action taken on guilty pleas, yet the bar acts through

individual bar counsel. The amendment recognizes this reality, in preserving the existing approval process but providing helpful flexibility.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee first discussed on December 4, 2003; Disciplinary Procedure Committee approved by voice vote of 5-0 on January 6, 2004 conference call; Rules Committee favorably reported by voice vote of 5-0 on March 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on April 2, 2004.

Dissent: None.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: This is the first of four different groups of proposed amendments to this rule. Within subdivision (g), adds new subdivision (5) to require that a petitioner allow inquiry into the petitioner's history of treatment or counseling of chemical or alcohol dependency or a medical condition that adversely affects the petitioner's fitness to practice but provides that, if such information is confidential, its confidentiality may be preserved pursuant to rule 3-7.1(d).

Reasons: In cases where rehabilitation includes treatment for chemical or alcohol dependency or a medical condition that adversely affects the petitioner's fitness to practice, the petitioner should be required – with adequate safeguards – to allow inquiry into such matters.

Source: Bar Staff and Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004; Rules Committee favorably reported by voice vote of 5-0 on May 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Dissent: None.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: This is the second of four different groups of proposed amendments to this rule. Within subdivision (h), deletes language that requires a referee to copy The Florida Bar with the referee's report regarding reinstatement.

Reasons: Reduces administrative burden on a referee since The Florida Bar should already possess a copy of the referee's report.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported on September 23, 2003 by vote of 4-0; Rules Committee favorably reported by voice vote of 5-0 on November 3, 2003 conference call.

Board Action: Board of Governors approved on consent calendar on January 30, 2004.

Dissent: None.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: This is the third of four different groups of proposed amendments to this rule. Within subdivision (l)(4), clarifies that "groups" as well as "persons" may respond to a petition for reinstatement and direct comments to bar counsel.

Reasons: Standing Board Policy that implements this rule as now written states that copies of a reinstatement petition shall be furnished to local bar associations. This amendment conforms the rule to existing practice and confirms the role of these and other groups in such proceedings.

Source: St. Petersburg Bar Association and Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Sponsored by the St. Petersburg Bar Association; developed by the Disciplinary Procedure Committee; Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on March 11, 2004 conference call; Rules Committee favorably reported by voice vote of 3-2 on May 4, 2004 conference call.

Board Action: Board of Governors approved by voice vote on May 28, 2004.

Dissent: None.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: This is the fourth of four different proposed amendments to this rule. Consistent with proposed changes in rules 3-5.1, 3-6.1, 3-7.2, and 3-7.12 which formalize the concept of "disbarment on consent," adds verbiage within subdivision (n) to make this rule applicable to an attorney who has been "disbarred on consent."

Reasons: Change in terminology based on a desire by the Board of Governors to reduce confusion outside the legal profession over the difference between disbarment and disciplinary resignation, and their similar effects on the licensure of a member.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported terminology "disciplinary revocation by consent" by voice vote of 6-0 on April 3, 2003; Disciplinary Procedure Committee reviewed further based upon staff input; Disciplinary Procedure Committee voted to reconsider terminology to "disbarment on consent" on July 22, 2003 with a vote of 4-0; Disciplinary Procedure Committee favorably reported revised rules by a vote of 4-0 on September 23, 2003; Rules Committee favorably reported initial amendments by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee favorably reported subsequent amendments by voice vote of 5-0 on November 3, 2003 conference call; on May, October, and December 2003 Board of Governors meeting agendas with no action taken.

Board Action: Board approved by voice vote on January 30, 2004.

Dissent: None.

Rule 3-7.11 General Rule of Procedure (re service issues)

Explanation: Within subdivision (f), revises and restates procedure for processing contempt actions to provide one procedure in all contempt matters; also provides procedure to institute proceedings, requires responses within court-established timelines, allows bar reply; permits assignment of a referee to develop factual record and clarifies that any proceedings before a referee are processed under the Rules Regulating The Florida Bar; deletes subdivision (g), the contents of which would be incorporated into revised subdivision (f); reorganizes other subdivisions accordingly; within current subdivision (h) – proposed (g) – provides that if the bar has court reporters as employees and a respondent objects to their service, the respondent is required to compensate the bar for the cost of hiring an independent court reporter.

Reasons: Current rule verbiage provides that contempt matters against a respondent shall be initiated by a petition for order to show cause filed with the supreme court, but there is no clarity as to whether a plea may be entertained and, if so, what procedures would apply. The proposed amendments would revise that process – by requiring a petition for contempt that includes a specific prayer for relief, allowing acceptance of pleas, and setting forth applicable procedures; places

the burden for court reporter costs on the party responsible for having incurred them.

Source: Bar Staff and Disciplinary Procedure Committee; Clerk of the Supreme Court of Florida.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004; Rules Committee favorably reported by voice vote of 5-0 on May 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Dissent: None.

Rule 3-7.12 Disciplinary Resignation From The Florida Bar

Explanation: Deletes entire rule in view of proposed amendments to rules 3-5.1, 3-6.1, 3-7.2 & 3-7.10 which would supersede and moot current provisions, and otherwise create unnecessary redundancy.

Reasons: Change in terminology based on a desire by the Board of Governors to reduce confusion outside the legal profession over the difference between disbarment and disciplinary resignation, and their similar effects on the licensure of a member.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported terminology "disciplinary revocation by consent" by voice vote of 6-0 on April 3, 2003; Disciplinary Procedure Committee reviewed further based upon staff input; Disciplinary Procedure Committee voted to reconsider terminology to "disbarment on consent" on July 22, 2003 with a vote of 4-0; Disciplinary Procedure Committee favorably reported revised rules by a vote of 4-0 on September 23, 2003; Rules Committee favorably reported initial amendments by fax/e-mail vote of 5-0 on May 7, 2003; Rules Committee favorably reported subsequent amendments by voice vote of 5-0 on November 3, 2003 conference call; on May, October, and December 2003 Board of Governors meeting agendas with no action taken.

Board Action: Board of Governors approved by voice vote on January 30, 2004

Dissent: None.

Subchapter 4-1 Client-Lawyer Relationship

Rule 4-1.5 Fees for Legal Services (re reasonable costs)

Explanation: This is first of three different groups of proposed amendments to this rule. Within subdivision (b) and comment, adds – as an additional factor in determining reasonable costs – the relationship and past course of conduct between the lawyer and the client; adds further language in comment, stating that costs appearing in sufficient detail on closing statements and approved by the parties to a transaction should meet the requirements of this rule.

Reasons: Current rules do not include guidance for bar members with regard to what costs may be properly passed on to clients – and at what rates – without overcharging. Ethics opinions have provided some assistance, but rule updates have been lacking. The proposed rule amendment provides new guidance, and a safe harbor for the lawyer who uses a written contract that sufficiently outlines the types and amounts of costs that are charged.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None

Committee Action: On January 31, 2003 board agenda for debate and final action; after debate, amendments were passed; proposed additional amendments considered by Disciplinary Procedure Committee on April 3, 2003; Disciplinary Procedure Committee discussed amendments, made suggested changes, and directed staff to provide revised amendments; Disciplinary Procedure Committee favorably reported final revisions to proposed amendments by a vote of 4-0 on May 19, 2003; under consideration on May, August, and October, 2003 Board of Governors meeting agendas.

Board Action: Board of Governors approved by voice vote on December 5, 2003.

Dissent: None.

Rule 4-1.5 Fees for Legal Services (re contingency fee regulation)

Explanation: This is the second of three different groups of proposed amendments to this rule. Within subdivision (e) and comment, adds language stating that the fact that a fee contract may not be in accord with the Rules Regulating The Florida Bar is an issue between lawyer and client, and a matter of professional ethics – not a basis for any action or defense by an opposing party when fee-shifting litigation is involved.

Reasons: Seeks to clarify that nonconformity with the Rules Regulating The Florida Bar may only be the basis for a third-party challenge of a fee contracts when

it is claimed within the context of a lawyer regulatory matter between attorney and client – not in any other legal proceeding.

Source: Bar Staff and Disciplinary Procedure Committee.

Commentary / Collaboration: None

Committee Action: Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004; Rules Committee favorably reported by voice vote of 5-0 on May 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Dissent: None

Rule 4-1.5 Fees for Legal Services (re hourly billing)

Explanation: This is the third of three different groups of proposed amendments to this rule. Within comment, adds language stating that lawyers should discuss with the client, where appropriate, other alternate billing methods beyond an hourly or fixed fee rate.

Reasons: The amendments further the professional responsibility of each member of the bar to provide adequate information to current and prospective clients so that they may make fully informed decisions about legal services. In this respect, the amendments assist clients in understanding alternatives by which legal services may be contracted. The amendment is proposed based on comments received from members of the bar that many of their clients do not understand that there may be alternative attorneys' fee arrangements available. This amendment merely provides that information be shared with a client or potential client that is sufficient for the client to make an informed decision concerning the nature of the lawyer's fee.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by voice vote of 5-0 on January 30, 2003; Rules Committee favorably reported by fax/e-mail vote of 6-0 on March 12, 2003; on April, May, August, October and December Board of Governors meeting agendas for further consideration; Rules Committee reaffirmed by voice vote of 6-0 on November 3, 2003.

Board Action: Board of Governors approved by voice vote on December 5, 2003.

Dissent: None.

Subchapter 4-3 Advocate

Rule 4-3.4 Fairness to Opposing Party and Counsel

Explanation: Conforms subsection (e) and comment to existing case law, to provide that a lawyer may state a personal opinion about the credibility of a witness when the statement is authorized by current law or rule and/or is supported by the record.

Reasons: Rule as now written is inconsistent with current case law. These amendments would update its provisions.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by a vote of 4-0 on May 19, 2003; Rules Committee favorably reported by fax/e-mail vote of 5-0 on July 29, 2003; Rules Committee reaffirmed by voice vote of 6-0 on November 3, 2003; on August and October board meeting agendas for further consideration.

Board Action: Board of Governors approved on consent calendar on December 5, 2003.

Dissent: None.

Subchapter 4-5 Law Firms and Associations

Rule 4-5.4 Professional Independence of a Lawyer

Explanation: Within subdivision (a)(4), revises language to further clarify existing provisions prohibiting bonus payments to nonlawyer employees based on the generation of clients or business, or calculated upon a percentage of legal fees received by the lawyer or firm.

Reasons: Clarifying amendment, proposed as more definitive guidance regarding a lawyer's payment of bonuses to nonlawyer employees.

Source: Disciplinary Procedure Committee

Commentary / Collaboration: None

Committee Action: Disciplinary Procedure Committee favorably reported by a vote of 3-0 on July 22, 2003; amendments suggested by Rules Committee member McClelland reviewed by Disciplinary Procedure Committee and favorably reported; on October and December, 2003 board meeting agenda for further consideration; Rules Committee favorably reported by vote of 6-0 on November 14, 2003.

Board Action: Board of Governors approved on consent calendar on January 30, 2004.

Dissent: None.

Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms

Explanation: New rule and comment, to set forth guidance regarding allowable client contact by lawyers and law firms when a lawyer is leaving a law firm or when a law firm is being dissolved.

Reasons: Lack of existing rule provisions dealing with this subject and a need for appropriate guidance to bar membership.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Board Review Committee referred to Disciplinary Procedure Committee for consideration; favorably reported by Disciplinary Procedure Committee by vote of 6-0 on November 13, 2003; after discussion and further edits, Rules Committee favorably reported by voice vote of 5-0 on January 6, 2004 conference call; on December 2003 and January 2004 Board of Governors meeting agenda – at January meeting, Board of Governors referred the issue back to Disciplinary Procedure Committee for consideration of the comments from the Young Lawyers Division; Disciplinary Procedure Committee, after discussion and comments from YLD president and other members of the bar, favorably reported the proposed amendment by vote of 4-0; Rules Committee favorably reported by voice vote of 4-0 on April 1, 2004.

Board Action: Board of Governors favorably reported by unanimous voice vote on April 2, 2004.

Dissent: None.

Subchapter 4-7 Information About Legal Services

Rule 4-7.7 Evaluation of Advertisements

Explanation: Within subdivision (b)(5), increases the filing fee for the evaluation of lawyer advertisements, from \$100 to \$150.

Reasons: Needed to help defray rising costs in administering various advertising rules within the Rules Regulating The Florida Bar. *See* February 11, 2004 memorandum from Elizabeth Clark Tarbert to the budget committee (discussing these issues) in Appendix D.

Source: Board of Legal Specialization & Education

Commentary / Collaboration: None.

Committee Action: Suggested and approved in concept by the Budget

Committee during the 2004 budget review; developed by bar staff; Rules Committee favorably reported by voice vote of 5-0 on March 4, 2004 conference call; Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Dissent: None.

Subchapter 4-8 Maintaining the Integrity of the Profession

Rule 4-8.1 Bar Admission and Discipline

Explanation: Adds new subdivision (c) and comment, to specify that an applicant for admission or a lawyer – in connection with an admission or disciplinary matter – shall not commit an act that adversely reflects on the applicant’s fitness to practice law; further specifies that an applicant who commits such an act before admission, but which is discovered thereafter, is subject to discipline under the Rules Regulating The Florida Bar.

Reasons: The proposed amendment would fill a regulatory void that now exists in the Rules Regulating The Florida Bar and the Rules of the Supreme Court Relating to Admissions to the Bar. Currently applicants for admission may engage in misconduct that may not be discovered until after admission, but which is not actionable under the bar admission rules. In such cases, it is unclear whether The Florida Bar may take action against the individual. After consultation with the Florida Board of Bar Examiners, it was agreed that a fix was necessary – and that it should be made within the Rules Regulating The Florida Bar.

Source: Bar Staff and Disciplinary Procedure Committee

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by vote of 4-0 on March 11, 2004; Rules Committee favorably reported by voice vote of 5-0 on Rules Committee May 4, 2004 conference call.

Board Action: Board of Governors approved on consent calendar on May 28, 2004.

Rule 4-8.4 Misconduct

Explanation: Within subdivision (c) and comment, adds new verbiage to allow a lawyer for a criminal law enforcement or regulatory agency, unless prohibited by law or rule, to advise or supervise others – or to participate in a capacity other than as lawyer – in an undercover investigation.

Reasons: Codifies current regulatory sentiment regarding the ethical limits of lawyers within a criminal law enforcement or regulatory agency who supervise others in undercover operations. See October 8, 2003 memorandum from Lori Holcomb to the board of governors (discussing these issues) in Appendix D.

Source: Standing Committee on the Unlicensed Practice of Law

Commentary / Collaboration: None.

Committee Action: Standing Committee on the Unlicensed Practice of Law approved by a vote of 17-0 on June 27, 2003; reviewed by executive committee August 2003; referred to Disciplinary Procedure Committee on September 9, 2003; Disciplinary Procedure Committee approved by a vote of 3-1 on September 23, 2003; Rules Committee favorably reported by voice vote of 6-0 on November 3, 2003.

Board Action: Revisions suggested and approved by Board of Governors by hand vote of 24-10 on December 5, 2003.

Dissent: None.

Rule 4-8.6 Authorized Business Entities

Explanation: Within subdivisions (d) - (g) and comment, adds "proprietor" and "proprietor of a solo practice" to those business entities in which lawyers are authorized to practice law.

Reasons: Corrective amendment, to add verbiage omitted from prior revisions intended to reflect all business entities in which lawyers may practice.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on April 1, 2004; on August and October, 2004 Board of Governors meeting agenda with no action taken; Rules Committee favorably reported by fax/email vote of 6-0 on September 30, 2004.

Board Action: Approved by Board of Governors on consent calendar on December 10, 2004.

Dissent: None.

Chapter 6 Legal Specialization and Education Programs

Subchapter 6-3 Florida Certification Plan

Rule 6-3.5 Standards for Certification

Explanation: This is the first of two different groups of proposed amendments to this rule. Within subdivision (c) adds new language to allow certain

lawyers who have been practicing or working abroad and who are applying for law certification to count that practice or special employment toward the 5-year practice requirement within the state of Florida, if provided for elsewhere within rules regarding particular certification areas.

Reasons: Addresses situations where lawyers have been practicing or performing law-related work abroad and are applying for certification, by allowing them to count some of that practice or employment toward the 5-year practice requirement within the state of Florida, if otherwise allowed within particular certification area standards.

Source: Board of Legal Specialization & Education.

Commentary / Collaboration: None.

Committee Action: Proposed by the International Law Certification Committee and favorably reported by BLSE on January 16, 2004; during March 4, 2004 conference call, Rules Committee tabled for further discussion while awaiting clarification from BLSE; BLSE discussed and clarified issue at March 19, 2004 BLSE meeting; Rules Committee favorably reported by voice vote of 4-0 at April 1, 2004 committee meeting; on April and May 2004 Board of Governors meeting agendas with no action taken; Program Evaluation Committee favorably reported by a unanimous voice vote on May 27, 2004; Board of Governors favorably reported by voice vote on May 28, 2004; amendment reconsidered by BLSE on November 5, 2004 and revised to remove reference to international law; BLSE unanimously approved revised version and re-submitted to Program Evaluation Committee, Rules Committee and Board of Governors; Rules Committee favorably reported by voice vote of 6-0 on November 22, 2004 conference call; Rules Committee supported a waiver of second reading by the board by voice vote of 6-0 on November 22, 2004; BLSE requesting waiver of second reading at December 10, 2004 Board of Governors meeting.

Board Action: Board of Governors approved waiver of second reading and amendments by voice vote on December 10, 2004.

Dissent: None.

Rule 6-3.5 Standards for Certification

Explanation: This is the second of two different groups of proposed amendments to this rule. Within subdivision (d), adds substitute language in subdivision (2) to require substantial involvement in a "particular area" of law instead of the general term "practice" of law; adds new language in new subdivision (d)(5)(B), to allow certification without examination in limited circumstances as

permitted by individual area standards; revises other subdivision entries as editorially necessary to accommodate this new matter.

Reasons: In subdivision (d)(2), the use of “particular area” clarifies the intent of the rule as to the substantial involvement expected in the year preceding application for qualification without examination. Proposed amendments to subdivision (d)(5)(B) would allow established area standards to permit qualification without examination in instances determined by the BLSE and the board of governors to be reasonable and appropriate.

Source: Board of Legal Specialization & Education

Commentary / Collaboration: None.

Committee Action: Proposed by the Appellate Practice Certification Committee; approved by BLSE on June 25, 2004 by vote of 12-0; referred to Program Evaluation Committee; Program Evaluation Committee favorably reported by a voice vote of 9-0 on August 12, 2004; Rules Committee favorably reported by fax/email vote of 6-0 on September 30, 2004.

Board Action: Board of Governors approved by voice vote on December 10, 2004.

Dissent: None.

Rule 6-3.7 Emeritus Specialist Status

Explanation: Within subdivision (c)(2), deletes the continuing legal education requirement in a particular certification area from the qualifications requirements; adds waiver provision for good cause shown within new subdivision (f); revises other subdivision entries as editorially necessary to accommodate this new matter; within former (g) – new (h) – extends, from 2 to 6 years, the grandfather period in which a formerly certified member may apply for emeritus status and be exempt from the certification requirement of this rule.

Reasons: Emeritus status was established by this court on February 8, 2001, for certified lawyers who, by virtue of a career change or retirement, are no longer able to meet the practice standards for certification. Examples include members who become judges, mediators, or law professors. Additional accommodations for these lawyers are proposed in order to continue fostering the emeritus concept, and would include an extension of the time to apply the rule, from 2 to 6 years, so that those members who were previously certified but were unable to qualify for recertification because of a significant change in their practice could still be reinstated as “emeritus.” [As more fully explained in section V, *infra*, this

expansion of the grandfather provision was further adjusted beyond the original proposal due to the timing of this petition.]

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Considered by BLSE in January 2003, with language approved on March 14, 2003 by a 12-0 vote; Rules Committee favorably reported by fax/email vote of 5-0 on May 7, 2003.

Board Action: Board of Governors approved by voice vote on August 22, 2003.

Dissent: None.

Rule 6-3.8 Revocation of Certification

Explanation: Reorganizes rule and adds appropriate subdivisions and titles; eliminates notice and hearing requirement for the revocation of a member's certification, either when a certification area is terminated or by reason of disciplinary action, and – by new provision – in cases of guilt of certain crimes; adds new provision for revocation of certification after hearing on appropriate notice if the certificate holder engaged in misconduct inconsistent with the demonstration of special knowledge, skills, proficiency, or ethical conduct and professionalism.

Reasons: Certain conditions prompting revocation of certification should not necessitate notice or hearing. Those matters seemingly ought to include: area termination; discipline; and criminal action. Additionally, misconduct inconsistent with ethical conduct, professionalism, or special knowledge and skills should warrant revocation after hearing and proper notice.

Source: Disciplinary Procedure Committee.

Commentary / Collaboration: None.

Committee Action: Considered by BLSE in January 2003 and language approved by BLSE on March 14, 2003 with a 12-0 vote; Rules Committee favorably reported by fax/email vote of 5-0 on May 7, 2003.

Board Action: Board of Governors approved by voice vote on August 22, 2003.

Dissent: None.

Chapter 10 Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law
Subchapter 10-2 Definitions

Rule 10-2.1 Generally

Explanation: This is the first of two different groups of proposed amendments to this rule. Within subdivision (a)(1), adds language stating that approved legal forms for the purposes of this rule are those approved by this court pursuant to rule 10-2.1(a), the Family Law Forms, and the Florida Supreme Court Approved Family Law Forms.

Reasons: Clarifies what legal forms are Supreme Court-approved forms for the purposes of this rule.

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Standing Committee on UPL approved by a vote of 19-1 on January 15, 2004; Rules Committee favorably reported by voice vote of 5-0 on March 4, 2004 conference call.

Board Action: Approved on consent calendar by Board of Governors on May 28, 2004.

Dissent: None.

Rule 10-2.1 Generally

Explanation: This is the second of two different groups of proposed amendments to this rule. Revises and expands subdivision (a)(1), to effectively require that a disclosure statement be given to a customer by a nonlawyer when the nonlawyer prepares any form, rather than just Supreme Court-approved forms; adds new requirements to disclosure statement, to include provisions that recite rule 10-2.1(b)'s definition of a paralegal; adds requirement that a nonlawyer keep – for a six-year period – copies of all forms given to any person being assisted.

Reasons: The current rule requires that a disclosure statement be given to a customer when a nonlawyer assists in the completion of only a supreme court-approved form. A copy of the form – nothing else – must also be kept in the customer's file. The proposed amendments would require a more detailed disclosure statement as to the authority of paralegals be given to the customer coincidental with the preparation of any form, and additionally require the nonlawyer to keep copies of all forms prepared for any customer, for a six-year period. *See* July 8, 2003 memorandum from Jeffrey T. Picker to the board of governors (discussing these issues) in Appendix D.

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Standing Committee on Unlicensed Practice of Law favorably reported by vote of 16-0 on June 27, 2003; Rules Committee favorably reported by fax/e-mail vote of 4-1 on July 29, 2003; subsequent editorial refinements accepted by proponents and Rules Committee by vote of 5-0 on July 31, 2003.

Board Action: Approved on consent calendar by Board of Governors on October 3, 2003.

Dissent: None.

Subchapter 10-6 Procedures for Investigation

Rule 10-6.1 Hearings

Explanation: Revises title to read "Taking of Testimony" instead of "Hearings"; within subdivision (a), similarly revises terminology and reference to when "hearings are held," to read when "testimony is taken"; and, within subdivision (d), additionally revises references to a complainant's right to be present at any circuit UPL committee "proceeding" rather than "hearing" – which is further clarified to be when the respondent is present before the committee to give testimony.

Reasons: These word changes more accurately describe these proceedings before a UPL committee, where merely testimony is taken – the session is not a "hearing" as that term is normally applied to other legal proceedings..

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Standing Committee on UPL; Standing Committee on UPL favorably reported by vote of 16-0 on June 24, 2004; Rules Committee favorably reported by voice vote of 6-0 on July 20, 2004 conference call; on August 13, 2004 Board of Governors meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on October 15, 2004.

Dissent: None.

Rule 10-6.2 Subpoenas

Explanation: Within subdivision (a), clarifies that a subpoena may be issued for the attendance of a person, for the production of documents, or for both.

Reasons: The rule as now written appears to require that subpoenas be issued only for the attendance of a person *and* for the production of documents. At

times, an investigation may warrant only the attendance of person or the production of documents, but not both. The proposed change clarifies that a subpoena may be issued for the attendance of a person, for the production of documents – or for both. See January 24, 2003 memorandum from Jeffrey T. Picker to the board of governors (discussing these issues) in Appendix D.

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Standing Committee on the Unlicensed Practice of Law; Standing Committee on UPL favorably reported by voice vote of 17-0 on January 17, 2003; Rules Committee favorably reported by fax/e-mail vote of 6-0 on March 12, 2003.

Board Action: Approved by Board of Governors on consent calendar on May 30, 2003.

Dissent: None.

Subchapter 10-7 Proceedings Before a Referee

Rule 10-7.1 Proceedings for Injunctive Relief

Explanation: Within subdivision (c), adds new provisions to require that a referee hold a pretrial case management conference within 60 days of the referee's appointment; sets forth the purpose of the conference and requires that a written order reflect the schedule for the proceedings as determined at such conference; revises or renumbers existing subdivision entries as necessary to accommodate this new matter.

Reasons: Codifies current practice and – consistent with the requirement in rule 3-7.6(c) as to pretrial conferences in lawyer disciplinary matters – would require that a case management conference be held within 60 days of appointment of a referee in UPL proceedings. See January 24, 2003 memorandum from Jeffrey T. Picker to the board of governors (discussing these issues) in Appendix D.

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Standing Committee on the Unlicensed Practice of Law; Standing Committee on UPL favorably reported by voice vote of 17-0 on January 17, 2003; Rules Committee favorably reported by fax/e-mail vote of 6-0 on March 12, 2003.

Board Action: Board of Governors favorably reported on consent calendar on May 30, 2003.

Dissent: None.

Rule 10-7.2 Proceedings for Indirect Criminal Contempt

Explanation: Within subdivision (b), conforms indigency requirements and determination of indigent status to new statutory criteria in §27.52, FLA.STAT. (2004); replaces "accused" with "respondent" to make verbiage consistent with other language used throughout remainder of the rule.

Reasons: A respondent in a criminal contempt proceeding for engaging in the unlicensed practice of law is able to claim indigent status. These proposed amendments conform the rule's indigency requirements to current state statutory law and make other language consistent with that in the rest of the rule.

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Standing Committee on Unlicensed Practice of Law; Standing Committee on Unlicensed Practice of Law favorably reported by vote of 15-0 on October 1, 2004; Rules Committee favorably reported by voice vote of 6-0 on November 22, 2004 conference call.

Board Action: Board waived second reading and approved amendments by voice vote on December 10, 2004.

Dissent: None.

Subchapter 10-8 Confidentiality

Rule 10-8.1 Files

Explanation: Consistent with proposed editorial revisions to rule 10-6.1, adds "transcribed testimony" and deletes reference to circuit committee "hearings" within the definition of "the UPL record."

Reasons: For consistency, conforms rule verbiage to proposed amendments within rule 10-6.1, which would change the name of proceedings before UPL committees from "hearing" to "taking testimony."

Source: Standing Committee on the Unlicensed Practice of Law.

Commentary / Collaboration: None.

Committee Action: Developed and sponsored by Standing Committee on UPL; Standing Committee on UPL favorably reported by vote of 16-0 on June 24, 2004; Rules Committee favorably reported by voice vote of 6-0 on July 20, 2004 conference call.

Board Action: Approved on consent calendar on October 15, 2004.

Dissent: None.

5. This petition constitutes the bar's master filing of virtually all rules changes acted on or favorably recommended by the board of governors between April 2003 and January 2005, in preparation for this consolidated submission per standing board policy. As further discussed in section V, *infra*, with the exception of nominal late-filed amendments added and one proposal removed, formal notice of all proposals herein was published in the January 1, 2005 issue of *The Florida Bar News*. A photocopy of that publication is included with this petition, at Appendix A.

V

6. Three different circumstances have influenced certain proposals within this filing to be somewhat at variance with its official notice, and other suggested amendments may not have proceeded in complete accordance with rule 1-12.

7. Following the January 1, 2005 official notice of this filing, the bar detected editorial discrepancies – “scrivener errors” – within several rules at issue herein. Therefore, the following matters are presented in slightly revised fashion consistent with this court's editorial protocols and style preferences:

Rule 3-5.1(g)(1): comma within series changed to semicolon.

Rule 3-6.1: semicolon in lead paragraph changed to a period.

Rule 3-7.1(f): internal cross-reference corrected.

Rule 3-7.2(f)(3): the word “case” corrected to “cause.”

Rule 3-7.10(b)(2): commas within series changed to semicolons.

Rule 4-3.4: because this rule is a series of prohibitions, punctuation has been revised at the end of subdivisions throughout its text, and a full sentence in an amendment originally proposed for the end of subdivision (e) has been converted to a phrase and relocated near the beginning of (e), to more properly fit this new language within the running series of admonitions that the entire rule contains; additionally, subpart numbers (1) and (2) of subdivision (f) have been eliminated and their text incorporated back into (f), consistent with this court’s editorial protocols.

Rule 4-8.6(c): comma added within series in lead sentence.

8. The 17-month delay between bar approval of one proposal and the instant filing has prompted further adjustment of time lines within another suggested amendment – for its more realistic implementation and administration, if adopted:

Current Rule 6-3.7(g) / Proposed Rule 6-3.7(h): Because of the time elapsed since board endorsement of this proposal in August of 2003, this petition seeks a further increase – by 2 additional years – of the extension of the grandfather exemptions in rule 6-3.7 applicable to formerly certified members who apply for emeritus specialist status. The proposal, as officially noticed, reflected a

recommended extension of the exemption, from the current “2 years” following the effective date of this rule, to “4 years.” That schedule no longer seems workable. As now tendered, the request is for “6 years.” Assuming normal disposition of this case and court approval, this additional adjustment in time should allow for the further promotion of the emeritus attorney concept as still sought by the board of legal specialization & education.

9. Following the January 1, 2005 official notice of this filing, significant member commentary in reaction to another proposal has influenced the board of governors to withdraw that submission for further study:

Rule 4-1.5(f)(4)(B)(ii): Originally contemplated with this filing were proposed amendments to rule 4-1.5, described as consistent with existing commentary language and which would have added verbiage within subdivision (f)(4)(B)(ii) intended to further clarify the process by which a trial judge should consider an upward departure from an otherwise presumed reasonable fee pursuant to that rule. Proposed language further discussed the burden of justifying an increased fee placed on both the lawyer and client, and the criteria for judges to consider in reviewing a petition for approval of such a fee. Member comment has raised enough questions about these suggested amendments – approved by the board of governors without debate – that the bar has opted to further consider the

additional issues they may raise prior to any final submission to this court. *See:* January 5, 2005 correspondence from Don Fountain to the clerk of this court and the executive director of The Florida Bar; January 18, 2005 correspondence from Hugh N. Smith to the clerk of this court and the executive director of The Florida Bar; and January 20, 2005 correspondence from S. Sammy Cacciatore to Clifton McClelland – (all discussing this proposal) in Appendix E. At the January 28, 2005 meeting of the Board of Governors of The Florida Bar, the board’s prior action favorably recommending these amendments was rescinded.

10. The Florida Bar submits that these deviations from rule 1-12.1 herein described in section V are minimal in effect and nominal in substance. Any variance from the procedures in the rule leading up to this presentation of these proposals should cause no harm. The bar therefore requests that these additional revised matters be accepted by the court, and that any necessary waiver pursuant to rule 1-12.1(i) be granted so that these amendments might travel with the other proposals described in section III herein, *supra*.

VI

11. The bar also notes that there are three other matters presently before this court, seeking separate amendments to the Rules Regulating The Florida Bar: *Amendments to The Rules Regulating The Florida Bar and the Rules of Judicial*

Administration, Case No. 04-135 (MJP); *Amendments to The Rules Regulating The Florida Bar*, Case No. 04-914 (PWP) and *Amendments to The Rules Regulating The Florida Bar*, Case No. 04-2246 (ABA). Those actions were commenced by the bar on February 9, 2004, June 1, 2004, and December 1, 2004, respectively. The proposals within the instant petition are unrelated to those pending actions and may be considered independent of them, although the instant petition includes proposed changes within rules 4-1.5, 4-5.4, 4-8.1, and 4-8.4 which are also at issue in *Amendments to The Rules Regulating The Florida Bar*, Case No. 04-2246 (ABA), and proposed changes within rules 3-2.1 and 3-7.2 which are also at issue in *Amendments to The Rules Regulating The Florida Bar and the Rules of Judicial Administration*, Case No. 04-135 (MJP).

VII

12. The full text of the proposed amendments herein is 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 explanation of and reasons for such changes as more fully expressed in this petition.

VIII

13. Appendix D includes copies of selected explanatory communications

during the rules development process, and copies of all comments submitted to the bar in reaction to official notices or other published accounts of the proposed amendments herein. As previously observed, only proposed changes within rule 4-1.5(f)(4)(B)(ii) drew appreciable commentary from within the profession.

IX

14. The bar has received no other comment regarding other proposals in response to its official notice of this filing and the amendments published therein.

15. Absent further court order or other comments of significance that might necessitate additional pleadings or appearances with respect to the proposed rules changes herein, the bar does not presently seek oral argument of the matters within this petition.

X

16. In anticipation that additional comments may be filed in response to the instant petition, The Florida Bar requests leave to file one consolidated reply to all such commentary, no later than 20 days after the 30-day period for comment in response to this petition has expired pursuant to rule 1-12.1(g), Rules Regulating The Florida Bar.

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,

John F. Harkness, Jr.
Executive Director
Florida Bar Number 123390

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President 2004-05
Florida Bar Number 354163

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February 4, 2005

CERTIFICATE OF TYPE SIZE AND STYLE

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail on this 4th day of February, 2005, to:

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