

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE RULES
REGULATING THE FLORIDA BAR
TO ADD CHAPTER 20 -- FLORIDA
REGISTERED PARALEGAL PROGRAM**

CASE NO. :

**PETITION TO AMEND THE RULES REGULATING THE
FLORIDA BAR TO ADD CHAPTER 20 -- FLORIDA
REGISTERED PARALEGAL PROGRAM**

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 to add chapter 20, the Florida Registered Paralegal Program. This petition has been authorized by the Board of Governors of The Florida Bar and the amendments and actions proposed herein were specifically approved by the Board of Governors of The Florida Bar by unanimous vote on June 2, 2006.

As the amendments deal with a unique issue and can stand alone, they are being filed separately from The Florida Bar's annual rules filing. The amendments are also being filed separately so that the matter may be under review well before the start of the 2007 legislative session rather than in February, 2007, shortly before the start of the 2007 legislative session. The Florida Bar began studying the issue of paralegal regulation in response to legislation filed in the 2005 legislative session. Similar legislation was filed in the 2006 legislative session while the bar was conducting its study and working on a proposed rule. Filing the amendments now may assist in avoiding any conflicting filing during the 2007 legislative session.

The following matters are presently before this Court seeking separate amendments to the Rules Regulating The Florida Bar:

Proposed Rule 11. Rules Governing the Law School Practice Program, filed January 21, 2003, case No. SC03-112

The Florida Bar Re: Petition to Amend Rules Regulating The Florida Bar [Advertising Rules], filed December 14, 2005, Case No. SC05-2194

In Re: Petition to Amend Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct, filed February 23, 2006, Case No. SC05-1150

The Florida Bar Re: Petition to Amend Rules Regulating The Florida Bar (Annual Rules Filing), filed April 26, 2006, Case No. SC06-736

The proposals within the instant petition are unrelated to the pending action and may be considered independent of it.

A formal notice containing the text of these proposed amendments was published in the July 1, 2006, issue of *The Florida Bar News*. A photocopy of that publication is included with this petition at Appendix "C." No comments were received by The Florida Bar in response to the notice.

INTRODUCTION

As noted above, during the 2005 legislative session, bills were introduced in both the House and Senate entitled "An Act Relating to Paralegals." The bills purported to regulate paralegals working in Florida. The Florida Bar was opposed to the legislation for several reasons, not the least of which was the belief that any regulation of paralegals should be in the judicial, rather than legislative, branch.

After learning of the bills, representatives of The Florida Bar met with Representative Juan Zapata, the House sponsor, Senator Nancy Argenziano, the Senate sponsor, and several members of the Florida Alliance of Paralegal Associations ("FAPA"), the proponents of the bills. As a result of the meetings, the sponsors of the bills agreed not to move forward on the legislation on the condition that The Florida Bar study the issues and propose a regulatory scheme prior to the start of the 2006 legislative session. The bill was filed again in 2006 during the course of the committee's work.

President Alan Bookman immediately appointed the Special Committee to Study Paralegal Regulation (hereinafter "the committee"). The charge of the committee was to study the status of paralegals in the state of Florida in light of the proposed legislation filed during the 2005 legislative session which

sought recognition and/or regulation of the paralegal profession. The committee was made up of twenty-two members and included four paralegals; three of whom are active or in leadership positions in FAPA, three paralegal educators, Representative Juan Zapata and attorneys from various geographic areas and areas of practice.

On October 28, 2005, the committee held a public hearing to elicit comment about the regulation of paralegals. A transcript of the public hearing is attached in Appendix "D." Appendix D also contains the written testimony received and reviewed by the committee.

The committee met many times and thoroughly debated the issues. On June 2, 2006, Ross Goodman, chair of the committee, presented the committee's report and the proposed chapter to the Board of Governors for final reading. See Appendix "D" for the committee's report. The board unanimously voted in favor of the proposed chapter.

DISCUSSION OF AMENDMENTS

Chapter 20 establishes the Florida Registered Paralegal program. The program sets up a two tier system for paralegals. The first tier, incorporated in the chapter by definition only, includes a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. This language is similar to the existing definition of paralegal found in rule 10-2.2(b) of the Rules Regulating The Florida Bar. No additional requirements are necessary to use the title paralegal and to perform paralegal work.

The second tier establishes the classification of Florida Registered Paralegal. In order to reach this tier, the individual must have certain education and training or certification, complete an application, and be registered by The Florida Bar. Someone who attains Florida Registered Paralegal status must follow a code of ethics, complete continuing education, and register with The Florida Bar on a yearly basis. In addition, the Florida Registered Paralegal's status is subject to revocation for violation of the code and the chapter. The second tier is intended to set a high standard for individuals working as paralegals so that the employing attorneys and the attorney's clients may rely on the paralegal's experience and qualifications.

Because the chapter establishes a two tier system, those individuals currently working as paralegals may continue to do so as long as they meet the general definition. Individuals who wish to obtain the higher level may do so, although obtaining the status is not mandatory to continuing to work as a paralegal. The chapter does not have any impact on attorney's fees, billing, or allowable activities.

While the language of the proposed chapter is self-explanatory, the language standing alone does not show the debate and thought process behind the language. An explanation of the chapter by section follows:

20-1 PREAMBLE

The preamble states the purpose of the chapter and makes it clear that the chapter is not intended to set forth the duties a paralegal may perform or be deemed relevant in charging or awarding fees for the services rendered by nonlawyer employees.

20-2 DEFINITIONS

This is the general definitional section. Some of the language is from exiting bar rules and does not need explanation.

Subdivision (a) sets forth the definition of paralegal. The definition requires that the individual have education, training, or work experience and work under the direction and supervision of a member of The Florida Bar performing specifically delegated substantive legal work for which a member of The Florida Bar is responsible. There are no additional requirements to use the title paralegal.

Subdivision (b) defines Florida Registered Paralegal. In addition to the general definition noted above, a Florida Registered Paralegal must also meet the requirements for registration set forth elsewhere in the chapter. During the committee discussions, this was referred to as tier two.

Subdivision (c) defines paralegal work experience. In order to become a Florida Registered Paralegal, the individual must have paralegal work experience. Paralegal work and paralegal work experience are specifically delegated substantive legal work performed by a person with education, training, or work experience under the direction and supervision of a

member of The Florida Bar for which a member of The Florida Bar is responsible. In order to qualify as paralegal work experience to meet the eligibility and renewal requirements of a Florida Registered Paralegal, the individual must primarily perform paralegal work and the work must be continuous and recent. Time spent performing clerical work is specifically excluded.

As to the requirement that the work be continuous and recent, the committee felt that this was necessary to raise the second tier to a level higher than the first tier. The committee felt that someone who had worked as a paralegal for a few months or many years ago should not be eligible for this higher level. Recent work experience is defined in the rule as work performed during three of the previous five years for initial registration and within the past year for renewal.

One way an individual may become a Florida Registered Paralegal is through education in an approved paralegal program. Subdivision (d) defines approved paralegal programs. The definition basically requires accreditation. As noted in the testimony at the public hearing, there is a wide range of paralegal programs available. The committee felt that it was important that the person have completed an accredited program as the Florida Registered Paralegal status is a higher status than that of paralegal. The specific educational requirements and the committee's reasoning is discussed elsewhere.

The remaining definitions are based on existing bar rules and do not need explanation.

20-3 ELIGIBILITY REQUIREMENTS

There are three ways an individual may obtain Florida Registered Paralegal status: 1) education and experience; 2) certification; and 3) grandfathering. The specific requirements are set forth in this subdivision.

Education and Experience

Subdivision 20-3.1(a) sets forth the education and experience necessary to obtain Florida Registered Paralegal status should the individual wish to use this avenue for registration. The types of degrees recognized are a bachelor's degree, an associates' degree and a juris doctorate degree. As

noted above, the committee felt that the requirements for Florida Registered Paralegal status needed to be high in order for the status to have any meaning. Having a bachelor's, associates' or juris doctorate degree meets this high standard. Not included in this list are "degrees" from certificate programs. This is due to the fact that the quality of the certificate programs vary -- some offer a program similar to those offered by a college or university while others offer a program with little or no class instruction or oversight. Because of the wide range of programs and the difficulty in quantifying the quality of the program, the committee voted to decline to include those types of programs at this time. The committee's decision was based in part on the testimony received at the public hearing.

In addition to having a degree, the proposed rule requires that the individual applying for Florida Registered Paralegal status have a certain amount of paralegal work experience. The number of years of experience required varies depending on the type of degree the individual has. For example, someone holding a bachelor's degree in paralegal studies needs less paralegal work experience than someone holding a bachelor's degree in another area of study. The committee felt that if an individual had specific education in paralegal studies or the law, less training was necessary.

Certification

Individuals holding a PACE certification offered by the National Federation of Paralegal Associations ("NFPA") and good standing with the NFPA and individuals holding certification offered by the National Association of Legal Assistants ("NALA") and good standing with NALA may also obtain Florida Registered Paralegal status. In order to obtain these certifications, an individual must pass an examination and must agree to adhere to a code of ethics and meet continuing education requirements. The committee felt that these certificates were of the type that met the goal of having high standards for Florida Registered Paralegal status.

Grandfathering

A final way to obtain Florida Registered Paralegal status is through the grandfathering provision. There was a great deal of debate on this issue. The majority of the members of the committee felt that someone who had been performing paralegal work for many years but did not have a degree or a certificate should have the opportunity to become a Florida Registered

Paralegal. The debate was whether the experience exception should be ongoing or should only last for a certain number of years; in other words, be subject to a sunset provision. As the rule is intended to create a higher level, the consensus of the committee was that the experience requirement should sunset after a period of years. Three years was chosen as a compromise position.

20-4 REGISTRATION

This subdivision sets forth the documentation necessary for registration and procedure for registration. Registration will be handled by The Florida Bar with no court involvement. An application will be promulgated by The Florida Bar and be available on the bar's website. A certificate will be issued by The Florida Bar. Annual renewal is required and will be on the same cycle as that for members of The Florida Bar. Fees for the initial application and renewal will be set by the Board of Governors. Renewal fees cannot exceed those of inactive members of The Florida Bar.

20-5 INELIGIBILITY FOR REGISTRATION OR RENEWAL

Some individuals are ineligible for Florida Registered Paralegal status. An individual can be ineligible for initial registration or for renewal of their registration. In addition, if a Florida Registered Paralegal becomes ineligible prior to the renewal period, for example, is convicted of a felony without their civil rights being restored, the individual's Florida Registered Paralegal status can be revoked. Individuals ineligible for Florida Registered Paralegal status may still work as a paralegal if an attorney chooses to hire the individual in that capacity.

20-6 CONTINUING EDUCATION

In order to maintain the high standard contemplated by Florida Registered Paralegal status, continuing education is required. A Florida Registered Paralegal is required to complete thirty hours every three years, five of which must be in ethics or professionalism. In addition to Florida Bar courses, NALA and NFPA courses would meet the requirement. The Florida Bar will be tracking the hours in the same way an attorney's hours are tracked. In order to do so, and to keep a record of registered individuals, The Florida Bar must develop and revise its computer programs. This will

take some time. Therefore, The Florida Bar is requesting that the effective date of the chapter be no sooner than March 1, 2007.

20-7 CODE OF ETHICS AND RESPONSIBILITY

Florida Registered Paralegals must comply with a Code of Ethics and Responsibility. The code is based on the code and guidelines established by NALA and NFPA. The code does not alter the employing attorney's obligations to supervise nonlawyer employees. The code also does not change the nonlawyer's responsibility to follow Florida's Code of Professional Responsibility to the extent it is applicable.

20-8 REVOCATION OF REGISTRATION

Chapter 20 establishes a system whereby a Florida Registered Paralegal's registration can be revoked or not renewed. The system is a hybrid of the existing Lawyer Regulation and Unlicensed Practice of Law systems with adaptations to fit the circumstances of the Florida Registered Paralegal program.

The rule provides for one paralegal committee for each appellate district for a total of five paralegal committees in the state. The district paralegal committees will be made up of public members and attorney members. One member of the district paralegal committee must be a Florida Registered Paralegal. One member of the committee must be an attorney. The remaining member or members may be attorneys, Florida Registered Paralegals or members of the public, whether or not a paralegal. While the rule establishes terms and term limits for the committee, The Florida Bar requests that the initial appointments be on staggered terms, for example, some members being given a one year term, some a two year term, and some a three year term. Staggered terms are not part of the rule but may be ordered by this Court.

A Florida Bar staff attorney will be assigned to each district paralegal committee and will assist in the review and processing of complaints. The district paralegal committees may hold hearings and subpoena witnesses and documents.

The rule sets forth the areas which would constitute a violation warranting action by the district paralegal committee and include violation of the Code

of Ethics and Responsibility. Upon a finding of a violation, the district paralegal committee may require that a specific continuing education course be taken, accept a cease and desist affidavit, suspend the individual's Florida Registered Paralegal status for a period not to exceed one year, revoke the Florida Registered Paralegal's registration, or deny a request for renewal of the registration. Individuals who have had their registration revoked or who have had renewal declined may reapply if they can meet the eligibility requirements.

Review of the district paralegal committee's actions is limited and does not involve this Court. If a district paralegal committee recommends revocation or denial of renewal, the recommendation goes to the member of the Board of Governors appointed as the designated reviewer for that committee. The designated reviewer may affirm the action of the district paralegal committee, request reconsideration or refer the matter to the Disciplinary Review Committee (DRC). A district paralegal committee may also refer a matter to the DRC if the district paralegal committee disagrees with the designated reviewer's action. The DRC reports its findings to the Board of Governors who has the authority to overrule the DRC. The board is the last level of review.

20-9 IMMUNITY

Rule 20-9 grants immunity to members of the district paralegal committee, the board, bar staff and counsel assisting the committees for acts in the course of their official duties.

20-10 AMENDMENTS

Rule 20-10 allows amendments to chapter 20 in accordance with the Rules Regulating The Florida Bar.

CONCLUSION

Chapter 20 is the product of many hours of debate, argument, drafting and redrafting. The Florida Bar believes that the chapter addresses the concerns of the paralegal community and of attorneys. The chapter allows attorneys to continue to utilize nonlawyer employees as paralegals while at the same time providing recognition to those individuals who through education, experience, or certification have obtained a higher standard.

WHEREFORE, The Florida Bar respectfully requests that this Court adopt Chapter 20 of the Rules Regulating The Florida Bar providing for staggered terms of the initial appointments to the district paralegal committee. The Florida Bar further requests that the effective date of the chapter be no sooner than March 1, 2007.

Respectfully submitted,

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