

APPENDIX A

**PROPOSED
AMENDMENTS IN
LEGISLATIVE FORMAT**

RULE 1-7.3 MEMBERSHIP FEES

(a) Membership Fees Requirement. On or before July 1 of each year, every member of The Florida Bar, except those members who have retired, resigned, been disbarred, or been classified as inactive members pursuant to rule 3-7.13, shall pay annual membership fees to The Florida Bar in the amount set by the budget, provided that the board of governors shall not fix the membership fees at more than \$265 per annum. At the time of the payment of membership fees every member of The Florida Bar shall file with the executive director a statement setting forth any information that may be required by the board of governors.

(b) Prorated Membership Fees. Persons admitted to The Florida Bar subsequent to July 1 of any fiscal year shall pay the annual membership fees for that fiscal year prorated on the basis of the number of full calendar months of the fiscal year remaining at the time of their admission.

Failure to pay prorated membership fees shall result in the amount of such prorated membership fees being added to the next annual membership fees billing to the member without penalty. The combined prorated and annual membership fees payment must thereafter be received by The Florida Bar on or before August 15, unless the member elects to pay by installment under this rule.

(c) Installment Payment of Membership Fees. Members of The Florida Bar may elect to pay annual membership fees in 3 equal installments as follows:

(1) in the second and third year of their admission to The Florida Bar; or

(2) if the member is employed by a federal, state, or local government in a non-elected position that requires the individual to maintain membership in good standing within The Florida Bar.

A member's notice of election to pay membership fees in installments under this rule and the first installment payment thereunder must be postmarked no later than August 15. The second and third installment payments must be postmarked no later than November 1 and February 1, respectively.

Second and/or third installment payments postmarked after their respective due date(s) shall be subject to a one-time late charge of \$50 per fiscal year, which shall accompany the final payment unless adjusted by the executive director with concurrence of the executive committee for good cause shown.

The executive director shall send written notice by registered or certified mail to the last official bar address of each member whose membership fees and late fees have not been paid under this rule by February 1. Upon failure to pay membership fees and any late charges under this rule by March 15, unless adjusted by the executive director with concurrence of the executive committee for good cause shown, the member shall be a delinquent member.

Each member who elects to pay annual membership fees in installments under this rule may be charged an additional administrative fee to defray the costs of this activity as set by the Board of Governors.

(d) Election of Inactive Membership. A member in good standing may elect by August 15 of a fiscal year to be classified as an inactive member. Such election shall be made only by indication of such choice on the annual membership fees statement and payment of the prescribed annual membership fees. Failure to make the initial election by August 15 shall constitute a waiver of the member's right to the election until the next fiscal year. Once a member has properly elected to be classified as an inactive member, such classification shall continue from fiscal year to fiscal year until such time as the member is reinstated as a member in good standing as elsewhere provided in these rules. The election of inactive status shall be subject to the restrictions and limitations elsewhere provided.

Membership fees for inactive members shall be set by the board of governors in an amount not to exceed \$175 per annum.

(e) Late Payment of Membership Fees. Payment of annual membership fees must be postmarked no later than August 15. Membership fees payments postmarked after August 15 shall be accompanied by a late charge of \$50 unless adjusted by the executive director with concurrence of the executive committee for good cause shown. The executive director shall send written notice by registered or certified mail to the last official bar address of each member whose membership fees have not been paid by August 15. Upon failure to pay membership fees and any late charges by September 30, unless adjusted by the executive director with

concurrence of the executive committee for good cause shown, the member shall be a delinquent member.

(f) Membership Fees Exemption for Activated Reserve Members of the Armed Services. Members of The Florida Bar engaged in reserve military service in the Armed Forces of the United States who are called to active duty for 30 days or more during the bar's fiscal year shall be exempt from the payment of membership fees required under this rule. For purposes of this rule, the Armed Forces of the United States includes the United States Army, Air Force, Navy, Marine Corps, Coast Guard, as well as the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. Requests for an exemption shall be made within 15 days before the date that membership fees are due each year or within 15 days of activation to duty of a reserve member. To the extent membership fees were paid despite qualifying for this exemption, such membership fee shall be reimbursed by The Florida Bar within 30 days of receipt of a member's request for exemption. Within 30 days of leaving active duty status, the member shall report to The Florida Bar that he or she is no longer on active duty status in the United States Armed Forces.

**RULE 1-12.2 SUPREME COURT PROCEDURES ON THE
REVIEW OF PROPOSED AMENDMENTS**

(a) Nature of Proceedings. The process of court review of amendments proposed under this rule is not an adversarial proceeding. The process is a procedure that is best implemented in a conference and dialogue setting as opposed to the case and controversy format.

(b) Court Conference Authorized. The court may direct a conference of interested persons at which the proposed amendments are discussed. The conference shall be held at a location specified in the court's order directing the scheduling of such conference.

(c) Notice of Conference. If the court directs that a conference shall be scheduled, the court shall also direct The Florida Bar to publish notice of such in The Florida Bar News at least 90 days before the date of the conference, or such other time as the court may direct.

(d) Participation at Conference. Interested persons may participate in the conference if those persons file a request for participation with the clerk of the Supreme Court of Florida and receive permission of the court to do so. Requests to participate shall be filed at least 30 days before the scheduled conference. However, the court may allow participation requested less than 30 days before the date of the conference for good cause shown.

(e) Written Comments. The court may direct persons participating in the conference to file written comments with the clerk of the Supreme Court of Florida and may require such comments as a prerequisite to participation at the conference. Written comments shall be filed at least 30 days before the scheduled conference, or such other time as the court may direct. A copy of all comments filed shall also be furnished to the executive director of The Florida Bar contemporaneous with filing such comments.

(f) Response to Comments. The person who filed the proposed amendments may file a response to any written comments and may do so within 10 days of the filing of the comments, or such other time as the court may direct.

(g) Additional Comments. The court may direct interested persons to file additional comments after the court conference and may limit the scope of such additional comments. The court may permit a reply to additional comments and shall fix a time for such if a reply is permitted.

Comment

The case and controversy format is ill-suited to providing a forum for discussion of proposed rule amendments and education of the court as to the bases for such amendments.

A conference at which participants may discuss proposed amendments in a back-and-forth dialogue with questions and answers for the education of the court provides a greater opportunity for full and complete discussion of all issues involved in the amendments.

The purpose of requiring notice is so that interested persons may study the proposed amendments and determine where consensus exists and where disagreement remains.

Requiring interested persons to request permission to participate in the conference allows for better administration in selecting the meeting site and in preparing materials for presentation. Requiring written comments from those who wish to participate in the conference identifies the issues for discussion and allows interested persons and the court to be better prepared for the dialogue.

BYLAW 2-7.3 CREATION OF SECTIONS AND DIVISIONS

Sections and divisions may be created or abolished by the board of governors as deemed necessary or desirable.

(a) Sections. The following sections of The Florida Bar have been created by the board of governors:

- (a~~1~~) Administrative Law Section;
- (b~~2~~) Appellate Practice Section;
- (c~~3~~) Business Law Section;
- (d~~4~~) City, County and Local Government Law Section;
- (e~~5~~) Criminal Law Section;
- (f~~6~~) Elder Law Section;
- (g~~7~~) Entertainment, Arts, and Sports Law Section;
- (h~~8~~) Environmental and Land Use Law Section;
- (i~~9~~) Equal Opportunities Law Section;
- (j~~10~~) Family Law Section;
- (k~~11~~) General Practice, Solo and Small Firm Section;
- (l~~12~~) Government Lawyer Section;
- (m~~13~~) Health Law Section;
- (n~~14~~) International Law Section;
- (o~~15~~) Labor and Employment Law Section;
- (p~~16~~) Practice Management and Development Section;
- (q~~17~~) Public Interest Law Section;
- (r~~18~~) Real Property, Probate, and Trust Law Section;
- (s~~19~~) Tax Section;
- (t~~20~~) Trial Lawyers Section; and
- (u~~21~~) Workers' Compensation Section.

(b) Divisions. The following divisions of The Florida Bar have been created by the board of governors:

- (a~~1~~) Out-of-State ~~Practitioners~~ Division; and
- (b~~2~~) Young Lawyers Division.

RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) Bar Counsel. A member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(b) The Board or the Board of Governors. The board of governors of The Florida Bar.

(c) Complainant or Complaining Witness. Any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(d) This Court or the Court. The Supreme Court of Florida.

(e) Court of this State. A state court authorized and established by the constitution or laws of the state of Florida.

(f) Diversion to Practice and Professionalism Enhancement Programs. The removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

(g) Executive Committee. The executive committee of the board of governors of The Florida Bar.

(h) Executive Director. The executive director of The Florida Bar.

(i) Practice and Professionalism Enhancement Programs. Programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

(j) Probable Cause. A finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(k) Referral to Practice and Professionalism Enhancement Programs. Placement of a lawyer in skills enhancement programs as a disciplinary sanction.

(l) Referee. A judge or retired judge appointed to conduct proceedings as provided under these rules.

(m) Respondent. A member of The Florida Bar or an attorney subject to these rules who is accused of misconduct or whose conduct is under investigation.

(n) Staff Counsel. A lawyer employee of The Florida Bar designated by the executive director and authorized by these Rules Regulating The Florida Bar to approve formal complaints, conditional guilty pleas for consent judgments, and diversion recommendations and to make appointment of bar counsel.

(o) Chief Branch Discipline Counsel. Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.

(p) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned by the board of governors with respect to a particular grievance committee or matter. ~~If a designated reviewer recuses or is unavailable, any other board member may serve as designated reviewer in that matter. The designated reviewer will be selected, from time to time, by the board members from the circuit of such grievance committee. In circuits having an unequal number of grievance committees and board members, review responsibility will be reassigned, from time to time, to equalize workloads. On such reassignments responsibility for all pending cases from a particular committee passes to the new designated reviewer. The chief branch discipline counsel will be given written notice of changes in the designated reviewing members for a particular committee.~~

(q) Final Adjudication. A decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

RULE 3-5.1 GENERALLY

A judgment entered, finding a member of The Florida Bar guilty of misconduct, shall include one or more of the following disciplinary measures:

(a) Admonishments. A Supreme Court of Florida order finding minor misconduct and adjudging an admonishment may direct the respondent to appear before the Supreme Court of Florida, the board of governors, grievance committee, or the referee for administration of the admonishment. A grievance committee report and finding of minor misconduct or the board of governors, upon review of such report, may direct the respondent to appear before the board of governors or the grievance committee for administration of the admonishment. A memorandum of administration of an admonishment shall thereafter be made a part of the record of the proceeding.

(b) Minor Misconduct. Minor misconduct is the only type of misconduct for which an admonishment is an appropriate disciplinary sanction.

(1) *Criteria.* In the absence of unusual circumstances misconduct shall not be regarded as minor if any of the following conditions exist:

(A) the misconduct involves misappropriation of a client's funds or property;

(B) the misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person;

(C) the respondent has been publicly disciplined in the past 3 years;

(D) the misconduct involved is of the same nature as misconduct for which the respondent has been disciplined in the past 5 years;

(E) the misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or

(F) the misconduct constitutes the commission of a felony under applicable law.

(2) *Discretion of Grievance Committee.* Despite the presence of 1 or more of the criteria described in subdivision (1) above, a grievance committee may recommend an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program when unusual circumstances are present. When the grievance committee recommends an admonishment for minor misconduct or diversion to a practice and professionalism enhancement program under such circumstances, its report shall contain a detailed explanation of the circumstances giving rise to the committee's recommendation.

(3) *Recommendation of Minor Misconduct.* If a grievance committee finds the respondent guilty of minor misconduct or if the respondent shall admit guilt of minor misconduct and the committee concurs, the grievance committee shall file its report recommending an admonishment, ~~recommending~~ the manner of administration, ~~and for the taxing of costs, and an assessment or administrative fee in the amount of \$1,250~~ against the respondent. The report recommending an admonishment shall be forwarded to staff counsel and the designated reviewer for review. If staff counsel does not return the report to the grievance committee to remedy a defect therein, or if the report is not referred to the disciplinary review committee by the designated reviewer (as provided in rule 3-7.5(b)), the report shall then be served on the respondent by bar counsel. The report and finding of minor misconduct shall become final unless rejected by the respondent within 15 days after service of the report. If rejected by the respondent, the report shall be referred to bar counsel and referee for trial on complaint of minor misconduct to be prepared by bar counsel as in the case of a finding of probable cause. If the report of minor misconduct is not rejected by the respondent, notice of the finding of minor misconduct shall be given, in writing, to the complainant.

(4) *Rejection of Minor Misconduct Reports.* The rejection by the board of governors of a grievance committee report of minor misconduct, without dismissal of the case, or remand to the grievance committee, shall be deemed a finding of probable cause. The rejection of such report by a respondent shall be deemed a finding of probable cause for minor misconduct. Upon trial before a referee following rejection by a respondent of a report of minor misconduct, the referee may recommend any discipline authorized under these rules.

(5) *Admission of Minor Misconduct.* Within 15 days after a finding of probable cause by a grievance committee, a respondent may tender a written admission of minor misconduct to bar counsel or the grievance committee. An admission of minor misconduct may be conditioned upon acceptance by the grievance committee, but the respondent may not condition the admission of minor misconduct upon the method of administration of the admonishment or upon nonpayment of costs incurred in the proceedings. Such an admission may be tendered after a finding of probable cause (but before the filing of a complaint) only if such an admission has not been previously tendered. If the admission is tendered after a finding of probable cause, the grievance committee may consider such admission without further evidentiary hearing and may either reject the admission, thereby affirming its prior action, or accept the admission and issue its report of minor misconduct. If a respondent's admission is accepted by the grievance committee, the respondent may not thereafter reject a report of the committee recommending an admonishment for minor misconduct. If the admission of minor misconduct is rejected, such admission shall not be considered or used against the respondent in subsequent proceedings.

(c) Probation. The respondent may be placed on probation for a stated period of time of not less than 6 months nor more than 3 years or for an indefinite period determined by conditions stated in the order. The judgment shall state the conditions of the probation, which may include but are not limited to the following:

(1) completion of a practice and professionalism enhancement program as provided elsewhere in these rules;

(2) supervision of all or part of the respondent's work by a member of The Florida Bar;

(3) the making of reports to a designated agency;

(4) the satisfactory completion of a course of study or a paper on legal ethics approved by the Supreme Court of Florida;

(5) such supervision over fees and trust accounts as the court may direct; or

(6) restrictions on the ability to advertise legal services, either in type of advertisement or a general prohibition for a stated period of time, in cases in which rules regulating advertising have been violated or the legal representation in which the misconduct occurred was obtained by advertising.

The respondent will reimburse the bar for the costs of supervision. Upon failure of a respondent to comply with the conditions of the probation or a finding of probable cause as to conduct of the respondent committed during the period of probation, the respondent may be punished for contempt on petition by The Florida Bar, as provided elsewhere in these Rules Regulating The Florida Bar. An order of the court imposing sanctions for contempt under this rule may also terminate the probation previously imposed.

(d) Public Reprimand. A public reprimand shall be administered in the manner prescribed in the judgment but all such reprimands shall be reported in the Southern Reporter. Due notice shall be given to the respondent of any proceeding set to administer the reprimand. The respondent shall appear personally before the Supreme Court of Florida, the board of governors, any judge designated to administer the reprimand, or the referee, if required, and such appearance shall be made a part of the record of the proceeding.

(e) Suspension. The respondent may be suspended from the practice of law for a definite period of time or an indefinite period thereafter to be determined by the conditions imposed by the judgment. During such suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing, and, upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to all of the privileges of members in The Florida Bar. A suspension of 90 days or less shall not require proof of rehabilitation or passage of the Florida bar examination. A suspension of more than 90 days shall require proof of rehabilitation and may require passage of all or part of the Florida bar examination. No suspension shall be ordered for a specific period of time in excess of 3 years.

(f) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the bar. Permanent disbarment shall preclude readmission. A former member who has not been permanently disbarred may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Except as might be otherwise provided in these rules, no application for

readmission may be tendered within 5 years after the date of disbarment or such longer period as the court might determine in the disbarment order and thereafter until all court-ordered restitution and outstanding disciplinary costs have been paid.

Disbarment is the presumed sanction for lawyers found guilty of theft from a lawyer's trust account or special trust funds received or disbursed by a lawyer as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document. A respondent found guilty of such theft shall have the opportunity to offer competent, substantial evidence to rebut the presumption that disbarment is appropriate.

(g) Notice to Clients. Upon service on the respondent of an order of disbarment, disbarment on consent, suspension, emergency suspension, emergency probation, or placement on the inactive list for incapacity not related to misconduct, the respondent shall, unless this requirement is waived or modified in the court's order, forthwith furnish a copy of the order to:

(1) all of the respondent's clients with matters pending in the respondent's practice;

(2) all opposing counsel or co-counsel in the matters listed in (1), above;
and

(3) all courts, tribunals, or adjudicative agencies before which the respondent is counsel of record.

Within 30 days after service of the order the respondent shall furnish bar counsel with a sworn affidavit listing the names and addresses of all persons and entities that have been furnished copies of the order.

(h) Forfeiture of Fees. An order of the Supreme Court of Florida or a report of minor misconduct adjudicating a respondent guilty of entering into, charging, or collecting a fee prohibited by the Rules Regulating The Florida Bar may order the respondent to forfeit the fee or any part thereof. In the case of a clearly excessive fee, the excessive amount of the fee may be ordered returned to the client, and a fee otherwise prohibited by the Rules Regulating The Florida Bar may be ordered forfeited to The Florida Bar Clients' Security Fund and disbursed in accordance with its rules and regulations.

(i) Restitution. In addition to any of the foregoing disciplinary sanctions and any disciplinary sanctions authorized elsewhere in these rules, the respondent may be ordered or agree to pay restitution to a complainant or other person if the disciplinary order finds that the respondent has received a clearly excessive, illegal, or prohibited fee or that the respondent has converted trust funds or property. In such instances the amount of restitution shall be specifically set forth in the disciplinary order or agreement and shall not exceed the amount by which a fee is clearly excessive, in the case of a prohibited or illegal fee shall not exceed the amount of such fee, or in the case of conversion shall not exceed the amount of the conversion established in disciplinary proceedings. The disciplinary order or agreement shall also state to whom restitution shall be made and the date by which it shall be completed. Failure to comply with the order or agreement shall not preclude further proceedings under these rules.

(j) Disbarment on Consent. A respondent may surrender membership in The Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. Disbarment on consent shall have the same effect as and shall be governed by the same rules as provided for disbarment elsewhere in these Rules Regulating The Florida Bar.

Matters involving disbarment on consent shall be processed in the same manner as conditional guilty pleas for consent judgments as provided elsewhere in these Rules Regulating The Florida Bar.

3-6. EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

RULE 3-6.1 GENERALLY

An authorized business entity (as defined elsewhere in these rules) may employ ~~individuals subject to this rule to~~ suspended attorneys and former attorneys who have been disbarred or whose disciplinary resignations have been allowed [for purposes of this rule such attorneys and former attorneys are referred to as either “individual(s) subject to this rule”, “individual(s)”, or “employee(s)”]. Subject to the exceptions set forth below these individuals may perform such those services only as that may ethically be performed by other lay persons nonlawyers employed by authorized business entities.

~~(a) **Individuals Subject to This Rule.** Individuals subject to this rule are suspended attorneys and former attorneys who have been disbarred, disbarred on consent, or whose disciplinary resignations have been allowed.~~

~~(b) **Definition of Employment.** An individual subject to this rule shall be considered as an employee of an authorized business entity if the individual is a salaried or hourly employee or volunteer worker for an authorized business entity, or an independent contractor providing services to an authorized business entity.~~

~~(c) **Employment by Former Subordinates Prohibited for a Period of 3 Years.** An individual subject to this rule may not, for a period of 3 years from the entry of the order pursuant to which the suspension, disciplinary resignation, or disbarment became effective, or until the individual is reinstated or readmitted to the practice of law, whichever occurs sooner, be employed by or work under the supervision of another attorney who was supervised by the individual at the time of or subsequent to the acts giving rise to the order.~~

~~(d) **Notice of Employment Required.** Before employment commences the employer shall provide The Florida Bar with a notice of employment and a detailed description of the intended services to be provided by the employee.~~

~~(e) **Prohibited Conduct.**~~

(1) Direct Client Contact. ~~No employee~~ Individuals subject to this rule shall not have direct contact with any client. Direct client contact does not include the participation of the employee individual as an observer in any meeting, hearing, or interaction between a supervising attorney and a client.

(2) Trust Funds or Property. Individuals subject to this rule shall not receive, disburse, or otherwise handle trust funds or property.

3) Practice of Law. Individuals subject to this rule shall not engage in conduct that constitutes the practice of law and such individuals shall not hold themselves out as being eligible to do so.

(fe) Quarterly Reports by Employee and Employer Required. The individual subject to this rule (employee) and employer shall submit sworn information reports, ~~quarterly based on a calendar year,~~ to The Florida Bar. Such reports shall be filed quarterly, based on the calendar year, and include statements that no aspect of the employee's work has involved the unlicensed practice of law, that the employee has had no direct client contact, ~~and~~ that the employee did not receive, disburse, or otherwise handle trust funds or property, and that the employee is not being supervised by an attorney who the employee supervised within the 3 years immediately previous to the date of the suspension, disbarment, or disciplinary resignation.

RULE 3-7.5 PROCEDURES BEFORE THE BOARD OF GOVERNORS

(a) Review by the Designated Reviewer. Notice of grievance committee action recommending either diversion to a practice and professionalism enhancement program or finding ~~either no probable cause, no probable cause with a letter of advice, minor misconduct, or probable cause shall be given to the designated reviewer for review. Upon review of the grievance committee action, the designated reviewer may request the grievance committee to reconsider its action or may refer the grievance committee action to the board of governors for its review.~~ The designated reviewer may request grievance committee reconsideration or refer the matter to the disciplinary review committee of the board of governors within 30 days of notice of grievance committee action. The request for a grievance committee reconsideration or referral to the disciplinary review committee shall be in writing and shall be submitted to bar counsel. For purposes of this subdivision letters, memoranda, handwritten notes, facsimile documents, and email shall constitute "in writing."

(1) Requests for Grievance Committee Reconsideration. If the designated reviewer requests grievance committee reconsideration, bar counsel shall forward the request to the chair of the grievance committee and shall give notice to the respondent and complainant that the request has been made. If the grievance committee agrees to reconsider the matter, the rule prescribing procedures before a grievance committee shall apply.

(2) Referrals to Disciplinary Review Committee and Board of Governors. If the designated reviewer refers the matter to the disciplinary review committee, bar counsel shall prepare and submit a discipline agenda item for consideration by the committee. Bar counsel shall give notice to respondent and complainant that the designated reviewer has made the referral for review.

(3) Nature of Disciplinary Review Committee and Board of Governors Review. The Florida Bar is a party in disciplinary proceedings and has no authority to adjudicate rights in those proceedings. Any such review on referral from a designated reviewer is in the nature of consultation on pending litigation and therefore is not subject to intervention by persons outside the relationship between the bar and its counsel.

(4) Effect of Failure to Timely Make the Request for Reconsideration or

Referral for Review. If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the grievance committee action shall become final.

(5) Authority of Designated Reviewer to Make Recommendations. When the designated reviewer makes a request for reconsideration or referral for review, the designated reviewer may recommend: ~~Recommendations of the designated reviewer may include:~~

- (1A) referral of the matter to the grievance mediation program;
- (2B) referral of the matter to the fee arbitration program;
- (3C) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;
- (4D) closure of the disciplinary file by the entry of a finding of no probable cause;
- (5E) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;
- (6F) a finding of minor misconduct; or
- (7G) a finding of probable cause that further disciplinary proceedings are warranted.

(b) Review of Grievance Committee Matters. The disciplinary review committee shall review those grievance committee matters referred to it by a designated reviewer and shall make a report to the board. The disciplinary review committee may confirm, reject, or amend the recommendation of the designated reviewer in whole or in part. The report of the disciplinary review committee shall be final unless overruled by the board. Recommendations of the disciplinary review committee may include:

- (1) referral of the matter to the grievance mediation program;
- (2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(c) Board Action on Review of Designated Reviewer Recommendations.

On review of a report and recommendation of the disciplinary review committee, the board of governors may confirm, reject, or amend the recommendation in whole or in part. Action by the board may include:

(1) referral of the matter to the grievance mediation program;

(2) referral of the matter to the fee arbitration program;

(3) closure of the disciplinary file by diversion to a component of the practice and professionalism enhancement program;

(4) closure of the disciplinary file by the entry of a finding of no probable cause;

(5) closure of the disciplinary file by the entry of a finding of no probable cause with a letter of advice;

(6) a finding of minor misconduct; or

(7) a finding of probable cause that further disciplinary proceedings are warranted.

(d) Notice of Board Action. Bar counsel shall give notice of board action to the respondent, complainant, and grievance committee.

(e) Finding of No Probable Cause. A finding of no probable cause by the board shall be final and no further proceedings shall be had in the matter by The Florida Bar.

(f) Control of Proceedings. Bar counsel, however appointed, shall be subject to the direction of the board at all times. The board, in the exercise of its discretion as the governing body of The Florida Bar, has the power to terminate disciplinary proceedings before a referee prior to the receipt of evidence by the referee, whether such proceedings have been instituted upon a finding of probable cause by the board or a grievance committee.

(g) Filing Service on Board of Governors. All matters to be filed with or served upon the board shall be addressed to the board of governors and filed with the executive director. The executive director shall be the custodian of the official records of The Florida Bar.

RULE 3-7.6 PROCEDURES BEFORE A REFEREE

(a) Referees. The chief justice shall have the power to appoint referees to try disciplinary cases and to delegate to a chief judge of a judicial circuit the power to appoint referees for duty in the chief judge's circuit. Such appointees shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

(b) Trial by Referee. When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and the formal complaint based on such finding of probable cause has been assigned by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

(c) Pretrial Conference. Within 60 days of the order assigning the case to the referee, the referee shall conduct a pretrial conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order in the proceedings reflecting the schedule determined at the conference.

(d) Venue. The trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the Supreme Court of Florida; provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

(e) Style of Proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, Complainant, v. (name of respondent), Respondent," and "In The Supreme Court of Florida (Before a Referee)."

(f) Nature of Proceedings.

(1) *Administrative in Character.* A disciplinary proceeding is neither civil nor criminal but is a quasi-judicial administrative proceeding. The Florida Rules of Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery*. Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(g) **Bar Counsel**. Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned.

(h) **Pleadings**. Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance*.

(A) *Filing*. The complaint shall be filed in the Supreme Court of Florida.

(B) *Content*. The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

(C) *Joinder of Charges and Respondents; Severance*. A complaint may embrace any number of charges against 1 or more respondents, and charges may be against any 1 or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.

(2) *Answer and Motion*. The respondent shall answer the complaint and, as a part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any proper privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint.

(3) *Reply*. If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(4) *Disposition of Motions*. Hearings upon motions may be deferred until the final hearing, and, whenever heard, rulings thereon may be reserved until

termination of the final hearing.

(5) *Filing and Service of Pleadings.*

(A) **Prior to Appointment of Referee.** Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made. On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

(B) **After Appointment of Referee.** All pleadings, motions, notices, and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on staff counsel and bar counsel of The Florida Bar and on all interested parties to the proceedings.

(6) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(7) *Expediting the Trial.* If it shall be made to appear that the date of final hearing should be expedited in the public interest, the referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule.

(8) *Disqualification of Referee.* Upon motion of either party, a referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification, the chief justice shall appoint a successor.

(i) Notice of Final Hearing. The cause may be set down for trial by either party or the referee upon not less than 10 days' notice. The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent's answer, or if no answer is filed, then from the date when such answer is due.

(j) The Respondent. Unless the respondent claims a privilege or right

properly available under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent is subpoenaed to appear and give testimony or to produce books, papers, or documents and refuses to answer or to produce such books, papers, or documents, or, having been duly sworn to testify, refuses to answer any proper question, the respondent may be cited for contempt of the court.

(k) Complaining Witness. The complaining witness is not a party to the disciplinary proceeding, and shall have no rights other than those of any other witness. However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the referee may grant the complaining witness the right to be present at any hearing when the respondent is also present. A complaining witness may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial. The complaining witness shall have no right to appeal.

(l) Parol Evidence. Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract may be used only if necessary to resolve issues of excessive fees or excessive costs.

(m) Referee's Report.

(1) *Contents of Report.* Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

(A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil

proceeding;

(B) recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures;

(C) recommendations as to the disciplinary measures to be applied;

(D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and

(E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed.

(2) *Filing.* The referee's report and record of proceedings shall in all cases be transmitted together to the Supreme Court of Florida. Copies of the report shall be served on the parties including staff counsel. Bar counsel will make a copy of the record, as furnished, available to other parties on request and payment of the actual costs of reproduction.

(n) The Record.

(1) *Recording of Testimony.* All hearings at which testimony is presented shall be attended by a court reporter who shall record all testimony. Transcripts of such testimony are not required to be filed in the matter, unless requested by a party, who shall pay the cost of transcription directly, or ordered by the referee, in which case the costs thereof are subject to assessment as elsewhere provided in these rules.

(2) *Contents.* The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

(3) *Preparation and Filing.* The referee, with the assistance of bar counsel, shall prepare the record, certify that the record is complete, serve a copy of the

index of the record on the respondent and The Florida Bar, and file the record with the office of the clerk of the Supreme Court of Florida.

(4) *Supplementing or Removing Items from the Record.* The respondent and The Florida Bar may seek to supplement the record or have items removed from the record by filing a motion with the referee for such purpose, provided such motion is filed within 15 days of the service of the index. Denial of a motion to supplement the record or to remove an item from the record may be reviewed in the same manner as provided for in the rule on appellate review under these rules.

(o) Plea of Guilty by Respondent. At any time during the progress of disciplinary proceedings, a respondent may tender a plea of guilty.

(1) *Before Filing of Complaint.* If the plea is tendered before filing of a complaint by staff counsel, such plea shall be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint.* If the complaint has been filed against the respondent, the respondent may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial. Such referee shall take such testimony thereto as may be advised, following which the referee will enter a report as otherwise provided.

(3) *Unconditional.* An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure.* Except as herein provided, all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

(p) Cost of Review or Reproduction.

(1) The charge for reproduction, when photocopying or other reproduction is performed by the bar, for the purposes of these rules shall be as determined and published annually by the executive director. In addition to reproduction charges, the bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings

and identification of documents to be reproduced.

(2) When the bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in the possession of the bar, the bar may decline to reproduce the documents in the offices of the bar and shall inform the requesting person of the following options:

(A) purchase of the transcripts from the court reporter service that produced them;

(B) purchase of the documents from the third party from whom the bar received them; or

(C) designation of a commercial photocopy service to which the bar shall deliver the original documents to be copied, at the requesting party's expense, provided the photocopy service agrees to preserve and return the original documents and not to release them to any person without the bar's consent.

(q) Costs.

(1) *Taxable Costs.* Taxable costs of the proceedings shall include only:

(A) investigative costs, including travel and out-of-pocket expenses;

(B) court reporters' fees;

(C) copy costs;

(D) telephone charges;

(E) fees for translation services;

(F) witness expenses, including travel and out-of-pocket expenses;

(G) travel and out-of-pocket expenses of the referee;

(H) travel and out-of-pocket expenses of counsel in the proceedings,

including of the respondent if acting as counsel; and

(I) an administrative fee in the amount of \$1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee shall have discretion to award costs and, absent an abuse of discretion, the referee's award shall not be reversed.

(3) *Assessment of Bar Costs.* When the bar is successful, in whole or in part, the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Respondent's Costs.* When the bar is unsuccessful in the prosecution of a particular matter, the referee may assess the respondent's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar.

Court Comment

A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.

RULE 3-7.11 GENERAL RULES OF PROCEDURE

(a) Time is Directory. Except as provided herein, the time intervals required are directory only and are not jurisdictional. Failure to observe such directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court of Florida, but will not prejudice the offending party except where so provided.

(b) Process. Every member of The Florida Bar is charged with notifying The Florida Bar of a change of mailing address or military status. Mailing of registered or certified papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise. Every attorney of another state who is permitted to practice for the purpose of a specific case before a court of record of this state may be served by registered or certified mail addressed to said attorney in care of the Florida attorney who was associated or appeared with the attorney in the specific case for which the out-of-state attorney was permitted to practice or addressed to said attorney at any address listed by the attorney in the pleadings in such case.

Provided, however, when a person is represented by counsel service of process and notices shall be directed to counsel.

(c) Notice in Lieu of Process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court of Florida and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last-known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

When the respondent is represented by counsel in the matter, due process is satisfied by the service of the complaint upon the respondent's counsel by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent's counsel according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

(d) Subpoenas. Subpoenas for the attendance of witnesses and the production of documentary evidence other than before a circuit court shall be issued as follows:

(1) *Referees.* Subpoenas for the attendance of witnesses and production of documentary evidence before a referee shall be issued by the referee and shall be served in the manner provided by law for the service of process or by an investigator employed by The Florida Bar.

(2) *Grievance Committees.* Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued by the chair or vice-chair of a grievance committee in pursuance of an investigation authorized by the committee. Such subpoenas may be served by any member of such committee, by an investigator employed by The Florida Bar, or in the manner provided by law for the service of process.

(3) *Bar Counsel Investigations.* Subpoenas for the attendance of witnesses and the production of documentary evidence before bar counsel when same is conducting an initial investigation shall be issued by the chair or vice chair of a grievance committee to which the matter will be assigned, if appropriate. Such subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

(4) *After Grievance Committee Action, But Before Appointment of Referee.* Subpoenas for the attendance of witnesses and the production of documentary evidence before bar counsel when same is conducting further investigation after action by a grievance committee, but before appointment of a referee, shall be issued by the chair or vice chair of the grievance committee to which the matter was assigned. Such subpoenas may be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

(5) *Board of Governors.* Subpoenas for the attendance of witnesses and the production of documentary evidence before the board of governors shall be issued by the executive director and shall be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process.

(6) *Confidential Proceedings.* If the proceeding is confidential, a subpoena

shall not name the respondent but shall style the proceeding as "Confidential Proceeding by The Florida Bar under the Rules of Discipline."

(7) *Contempt.* Any persons who without adequate excuse fail to obey such a subpoena served upon them may be cited for contempt of this court in the manner provided by this rule.

(8) *Assistance to Other Lawyer Disciplinary Jurisdictions.* Upon receipt of a subpoena certified to be duly issued under the rules or laws of another lawyer disciplinary jurisdiction, the executive director may issue a subpoena directing a person domiciled or found within the state of Florida to give testimony and/or produce documents or other things for use in the other lawyer disciplinary proceedings as directed in the subpoena of the other jurisdiction. The practice and procedure applicable to subpoenas issued under this subdivision shall be that of the other jurisdiction, except that:

(A) the testimony or production shall be only in the county wherein the person resides or is employed, or as otherwise fixed by the executive director for good cause shown; and

(B) compliance with any subpoena issued pursuant to this subdivision and contempt for failure in this respect shall be sought as elsewhere provided in these rules.

(e) **Oath of Witness.** Every witness in every proceeding under these rules shall be sworn to tell the truth. Violation of this oath shall be an act of contempt of this court.

(f) **Contempt.** When a disciplinary agency, as defined elsewhere in these rules, finds that a person is in contempt under these rules, such person may be cited for contempt in the following manner:

(1) *Petition for Contempt and Order to Show Cause.* When a person is found in contempt by a disciplinary agency, bar counsel shall file a petition for contempt and order to show cause with the Supreme Court of Florida.

(2) *Order to Show Cause.* On review of a petition for contempt and order to show cause, the supreme court may issue an order directing the person to

show cause why such person should not be held in contempt and appropriate sanctions imposed. The order of the supreme court shall fix a time for a response.

(3) *Failure to Respond to Order to Show Cause.* Upon failure to timely respond to an order to show cause, the matters alleged in the petition shall be deemed admitted and the supreme court may enter a judgment of contempt and impose appropriate sanctions. Failure to respond may be an additional basis on which a judgment of contempt may be entered and sanctions imposed.

(4) *Reply of The Florida Bar.* When a timely response to an order to show cause is filed, The Florida Bar shall have 10 days, or such other time as the supreme court may order, from the date of filing in which to file a reply.

(5) *Supreme Court Action.* After expiration of the time to respond to an order to show cause and no response is timely filed, or after the reply of The Florida Bar has been filed, or the time therefore has expired without such filing, the supreme court shall review the matter and issue an appropriate judgment. Such judgment may include any sanction that a court may impose for contempt and, if the person found in contempt is a member of The Florida Bar, may include any disciplinary sanction authorized under these rules.

If the supreme court requires factual findings, the supreme court may direct appointment of a referee as elsewhere provided in these rules. Proceedings for contempt referred to a referee shall be processed in the same manner as disciplinary proceedings under these rules, including but not limited to the procedures provided therein for conditional guilty pleas for consent judgments.

(6) Preparation and Filing of Report of Referee and Record. The referee shall prepare and file a report and the record in cases brought under this rule. The procedures provided for in the rule on procedure before a referee elsewhere under these rules shall apply to the preparation, filing, and review of the record herein.

(7) Appellate Review of Report of Referee. Any party to the contempt proceedings may seek review of the report of referee in the manner provided in the rule on appellate review of disciplinary proceedings under these rules.

(g) Court Reporters. Court reporters who are employees of The Florida Bar may be appointed to report any disciplinary proceeding. If the respondent objects at least 48 hours in advance of the matter to be recorded, an independent contract reporter may be retained. Reasonable costs for independent court reporter service shall be taxed to a respondent for payment to The Florida Bar.

(h) Disqualification as Trier and Attorney for Respondent Due to Conflict.

(1) *Grievance Committee Members, Members of the Board of Governors, and Employees of The Florida Bar.* No grievance committee member, member of the board of governors, or employee of The Florida Bar shall represent a party other than The Florida Bar in disciplinary proceedings authorized under these rules.

(2) *Former Grievance Committee Members, Former Board Members, and Former Employees.* No former member of a grievance committee, former member of the board of governors, or former employee of The Florida Bar shall represent any party other than The Florida Bar in disciplinary proceedings authorized under these rules if personally involved to any degree in the matter while a member of the grievance committee, the board of governors, or while an employee of The Florida Bar.

A former member of the board of governors, former member of any grievance committee, or former employee of The Florida Bar who did not participate personally in any way in the investigation or prosecution of the matter or in any related matter in which the attorney seeks to be a representative, and who did not serve in a supervisory capacity over such investigation or prosecution, shall not represent any party except The Florida Bar for 1 year after such service without the express consent of the board.

(3) *Partners, Associates, Employers, or Employees of the Firms of Grievance Committee Members or Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar.* Members of the firms of grievance committee members or board members shall not represent any party other than The Florida Bar in disciplinary proceedings authorized under these rules without the express consent of the board.

(4) *Partners, Associates, Employers, or Employees of the Firms of Former Grievance Committee Members or Former Board of Governors Members Precluded From Representing Parties Other Than The Florida Bar.* Attorneys in the firms of former board members or former grievance committee members shall not represent any party other than The Florida Bar in disciplinary proceedings authorized under these rules for 1 year after the former member's service without the express consent of the board.

RULE 3-7.16 LIMITATION ON TIME TO BRING COMPLAINT

(a) Time for Inquiries, ~~and~~ Complaints, and Reopened Cases. Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered.

A reopened disciplinary investigation shall not be barred by this rule if the investigation is reopened within 1 year of the date on which the matter was closed, except that reopened investigations based on deferrals made in accord with bar policy and as authorized elsewhere in these Rules Regulating The Florida Bar shall not be barred if reopened within 1 year of the conclusion of the civil, criminal, or other proceeding on which deferral was based.

(b) Exception for Theft or Conviction of a Felony Criminal Offense. There shall be no limit on the time in which to present, reopen, or bring a matter alleging theft or conviction of a felony criminal offense by a member of The Florida Bar.

(c) Tolling Based on Fraud, Concealment, or Misrepresentation. In matters covered by this rule where it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the matter giving rise to the inquiry or complaint, the limitation of time in which to bring or reopen an inquiry or complaint within this rule shall be tolled.

(d) Constitutional Officers. Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar shall be commenced within 6 years after the constitutional officer vacates office.

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fee and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is

established for charging costs, the costs charged thereunder shall be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

(d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client. When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

(f) Contingent Fees. As to contingent fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

(3) A lawyer shall not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(B) a contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements:

(A) The contract shall contain the following provisions:

(i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s)."

(ii) “This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client.”

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to \$1 million; plus
2. 30% of any portion of the recovery between \$1 million and \$2 million; plus
3. 20% of any portion of the recovery exceeding \$2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:

1. 40% of any recovery up to \$1 million; plus

2. 30% of any portion of the recovery between \$1 million and \$2 million; plus

3. 20% of any portion of the recovery exceeding \$2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to \$1 million; plus

2. 20% of any portion of the recovery between \$1 million and \$2 million; plus

3. 15% of any portion of the recovery exceeding \$2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar

subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An

application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is in proportion to the services performed by each lawyer;
or

(2) by written agreement with the client:

(A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and

(B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.

(h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan.

(i) Arbitration Clauses. A lawyer shall not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with 1 lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar,

the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

Client Signature

Attorney Signature

Date

Date

Comment

Basis or rate of fee and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Terms of payment

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See rule 4-1.16(d). A lawyer is not, however, required to return retainers that, pursuant to an agreement with a client, are not refundable. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent

fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Prohibited contingent fees

Subdivision (f)(3)(A) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts do not implicate the same policy concerns.

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part noncontingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the noncontingent portion of the fee agreement. An attorney could properly charge and retain the noncontingent portion of the fee even if the matter was not successfully prosecuted or if the noncontingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned noncontingent fees. Thus, under such a contract a lawyer may demand or

collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

Upon a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract.

The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis.

This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client.

Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar.

Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees.

Division of fee

A division of fee is a single billing to a client covering the fee of 2 or more lawyers who are not in the same firm. A division of fee facilitates association of more than 1 lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Subject to the provisions of subdivision (f)(4)(D), subdivision (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in rule 4-5.1 for purposes of the matter involved.

Disputes over fees

Since the fee arbitration rule (Chapter 14) has been established by the bar to provide a procedure for resolution of fee disputes, the lawyer should conscientiously consider submitting to it. Where law prescribes a procedure for

determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages, the lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Referral fees and practices

A secondary lawyer shall not be entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that allowed by the limitation.

The provisions of rule 4-1.5(f)(4)(D)(iii) only apply where the participating lawyers have for purposes of the specific case established a co-counsel relationship. The need for court approval of a referral fee arrangement under rule 4-1.5(f)(4)(D)(iii) should only occur in a small percentage of cases arising under rule 4-1.5(f)(4) and usually occurs prior to the commencement of litigation or at the onset of the representation. However, in those cases in which litigation has been commenced or the representation has already begun, approval of the fee division should be sought within a reasonable period of time after the need for court approval of the fee division arises.

In determining if a co-counsel relationship exists, the court should look to see if the lawyers have established a special partnership agreement for the purpose of the specific case or matter. If such an agreement does exist, it must provide for a sharing of services or responsibility and the fee division is based upon a division of the services to be rendered or the responsibility assumed. It is contemplated that a co-counsel situation would exist where a division of responsibility is based upon, but not limited to, the following: (a) based upon geographic considerations, the lawyers agree to divide the legal work, responsibility, and representation in a convenient fashion. Such a situation would occur when different aspects of a case must be handled in different locations; (b) where the lawyers agree to divide the legal work and representation based upon their particular expertise in the substantive areas of law involved in the litigation; or (c) where the lawyers agree to

divide the legal work and representation along established lines of division, such as liability and damages, causation and damages, or other similar factors.

The trial court's responsibility when reviewing an application for authorization of a fee division under rule 4-1.5(f)(4)(D)(iii) is to determine if a co-counsel relationship exists in that particular case. If the court determines a co-counsel relationship exists and authorizes the fee division requested, the court does not have any responsibility to review or approve the specific amount of the fee division agreed upon by the lawyers and the client.

Rule 4-1.5(f)(4)(D)(iv) applies to the situation where appellate counsel is retained during the trial of the case to assist with the appeal of the case. The percentages set forth in subdivision (f)(4)(D) are to be applicable after appellate counsel's fee is established. However, the effect should not be to impose an unreasonable fee on the client.

Credit Plans

Credit plans include credit cards. If a lawyer accepts payment from a credit plan for an advance of fees and costs, the amount must be held in trust in accordance with chapter 5, Rules Regulating The Florida Bar, and the lawyer must add the lawyer's own money to the trust account in an amount equal to the amount charged by the credit plan for doing business with the credit plan.

RULE 4-6.5 VOLUNTARY PRO BONO PLAN

(a) Purpose. The purpose of the voluntary pro bono attorney plan is to increase the availability of legal service to the poor. The following operating plan has as its goal the improvement of the availability of legal services to the poor and the expansion of present pro bono legal service programs. The following operating plan shall be implemented to accomplish this purpose and goal.

(b) Standing Committee on Pro Bono Legal Service. The president-elect of The Florida Bar shall appoint a standing committee on pro bono legal service to the poor.

(1) Composition of the Standing Committee. The standing committee shall be composed of:

(A) 5 members of the board of governors of The Florida Bar, 1 of whom shall be the chair or a member of the access to the legal system committee of the board of governors;

(B) 5 past or current directors of The Florida Bar Foundation;

(C) 1 trial judge and 1 appellate judge;

(D) 2 representatives of civil legal assistance providers;

(E) 2 representatives from local and statewide voluntary bar associations;

(F) 2 public members, 1 of whom shall be a representative of the poor

(G) the president or designee of the Board of Directors of Florida Legal Services, Inc.; and

(H) 1 representative of the out-of-state practitioners¹-division of The Florida Bar.

(2) Responsibilities of the Standing Committee. The standing committee shall:

(A) receive reports from circuit committees submitted on standardized forms developed by the standing committee;

(B) review and evaluate circuit court pro bono plans;

(C) beginning in the first year in which individual attorney pro bono reports are due, submit an annual report as to the activities and results of the pro bono plan to the board of governors of The Florida Bar, The Florida Bar Foundation, and to the Supreme Court of Florida;

(D) present to the board of governors of The Florida Bar and to the Supreme Court of Florida any suggested changes or modifications to the pro bono rules.

(c) Circuit Pro Bono Committees. There shall be 1 circuit pro bono committee in each of the judicial circuits of Florida. In each judicial circuit the chief judge of the circuit, or the chief judge's designee, shall appoint and convene the initial circuit pro bono committee and the committee shall appoint its chair.

(1) *Composition of Circuit Court Pro Bono Committee.* Each circuit pro bono committee shall be composed of:

(A) the chief judge of the circuit or the chief judge's designee;

(B) to the extent feasible, 1 or more representatives from each voluntary bar association, including each federal bar association, recognized by The Florida Bar and 1 representative from each pro bono and legal assistance provider in the circuit, which representatives shall be nominated by the association or provider; and

(C) at least 1 public member and at least 1 client-eligible member, which members shall be nominated by the other members of the circuit pro bono committee.

Governance and terms of service shall be determined by each circuit pro bono committee. Replacement and succession members shall be appointed by the chief judge of the circuit or the chief judge's designee, upon nomination by

the association, the provider organization or the circuit pro bono committee, as the case may be, as deemed appropriate or necessary to ensure an active circuit pro bono committee in each circuit.

(2) *Responsibilities of Circuit Pro Bono Committee.* The circuit pro bono committee shall:

(A) prepare in written form a circuit pro bono plan after evaluating the needs of the circuit and making a determination of present available pro bono services;

(B) implement the plan and monitor its results;

(C) submit an annual report to The Florida Bar standing committee;

(D) to the extent possible, current legal assistance and pro bono programs in each circuit shall be utilized to implement and operate circuit pro bono plans and provide the necessary coordination and administrative support for the circuit pro bono committee;

(E) to encourage more lawyers to participate in pro bono activities, each circuit pro bono plan should provide various support and educational services for participating pro bono attorneys, which, to the extent possible, should include:

(i) providing intake, screening, and referral of prospective clients;

(ii) matching cases with individual attorney expertise, including the establishment of specialized panels;

(iii) providing resources of litigation and out-of-pocket expenses for pro bono cases;

(iv) providing legal education and training for pro bono attorneys in specialized areas of law useful in providing pro bono legal service;

(v) providing the availability of consultation with attorneys who have expertise in areas of law with respect to which a volunteer lawyer is providing pro bono legal service;

(vi) providing malpractice insurance for volunteer pro bono lawyers with respect to their pro bono legal service;

(vii) establishing procedures to ensure adequate monitoring and follow-up for assigned cases and to measure client satisfaction; and

(viii) recognition of pro bono legal service by lawyers.

(d) Suggested Pro Bono Service Opportunities. The following are suggested pro bono service opportunities that should be included in each circuit plan:

(1) representation of clients through case referral;

(2) interviewing of prospective clients;

(3) participation in pro se clinics and other clinics in which lawyers provide advice and counsel;

(4) acting as co-counsel on cases or matters with legal assistance providers and other pro bono lawyers;

(5) providing consultation services to legal assistance providers for case reviews and evaluations;

(6) participation in policy advocacy;

(7) providing training to the staff of legal assistance providers and other volunteer pro bono attorneys;

(8) making presentations to groups of poor persons regarding their rights and obligations under the law;

(9) providing legal research;

- (10) providing guardian ad litem services;
- (11) providing assistance in the formation and operation of legal entities for groups of poor persons; and
- (12) serving as a mediator or arbitrator at no fee to the client-eligible party.

RULE 5-1.1 TRUST ACCOUNTS

(a) Nature of Money or Property Entrusted to Attorney.

(1) *Trust Account Required; Commingling Prohibited.* A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.

(2) *Compliance With Client Directives.* Trust funds may be separately held and maintained other than in a bank or savings and loan association account if the lawyer receives written permission from the client to do so and provided that written permission is received before maintaining the funds other than in a separate account.

(3) *Safe Deposit Boxes.* If a member of the bar uses a safe deposit box to store trust funds or property, the member shall advise the institution in which the deposit box is located that it may include property of clients or third persons.

(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.

(c) Liens Permitted. This subchapter does not preclude the retention of money or other property upon which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.

(d) Controversies as to Amount of Fees. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate, or fraudulent. In a controversy alleging a clearly excessive, extortionate, or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided, such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used herein, the term:

(A) “nominal or short term” describes funds of a client or third person that, pursuant to subdivision (3), below, the lawyer has determined cannot practicably be invested for the benefit of the client or third person;

(B) “Foundation” means The Florida Bar Foundation, Inc.;

(C) “IOTA account” means an interest or dividend-bearing trust account benefitting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons;

(D) “Eligible Institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Savings and Loan Insurance Corporation, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open- end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and have total assets of at least \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida shall be deposited into one or more IOTA accounts, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term shall be deposited into an IOTA account. The member shall certify annually, in writing, that the member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer shall exercise good faith judgment in determining upon receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer shall consider such factors as:

(A) the amount of a client's or third person's funds to be held by the lawyer or law firm;

(B) the period of time such funds are expected to be held;

(C) the likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) the cost to the lawyer or law firm of establishing and maintaining an interest-bearing account or other appropriate investment for the benefit of the client or third person; and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with ethical impropriety or other breach of professional conduct based on the exercise of such good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms shall advise the Foundation, at Post Office Box 1553, Orlando, Florida 32802-1553, of the establishment of an IOTA account for funds covered by this rule. Such notice shall include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar attorney number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, savings and loan associations, and investment

companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) Interest Rates and Dividends. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) Determination of Interest Rates and Dividends. In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) Remittance and Reporting Instructions. Eligible institutions shall:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the Foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the Foundation, the rate of interest applied, and the period for which

the statement is made.

(6) *Small Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation shall protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation shall, upon an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

(h) Interest on Funds That Are Not Nominal or Short-Term. A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter shall not receive benefit from interest on funds held in trust.

(i) Unidentifiable Trust Fund Accumulations and Trust Funds Held for Missing Owners. When an attorney's trust account contains an unidentifiable accumulation of trust funds or property, or trust funds or property held for missing owners, such funds or property shall be so designated. Diligent search and inquiry shall then be made by the attorney to determine the beneficial owner of any unidentifiable accumulation or the address of any missing owner. If the beneficial owner of an unidentified accumulation is determined, the funds shall be properly identified as the lawyer's trust property. If a missing beneficial owner is located, the trust funds or property shall be paid over or delivered to the beneficial owner if the owner is then entitled to receive the same. Trust funds and property that remain unidentifiable and funds or property that are held for missing owners after being designated as such shall, after diligent search and inquiry fail to identify the beneficial owner or owner's address, be disposed of as provided in applicable Florida law.

(j) Disbursement Against Uncollected Funds. A lawyer generally may not

use, endanger, or encumber money held in trust for a client for purposes of carrying out the business of another client without the permission of the owner given after full disclosure of the circumstances. However, certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients owning trust account funds subject to possibly being affected. Except for disbursements based upon any of the 6 categories of limited-risk uncollected deposits enumerated below, a lawyer may not disburse funds held for a client or on behalf of that client unless the funds held for that client are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled, and credited to the lawyer’s trust account. Notwithstanding that a deposit made to the lawyer’s trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit:

(1) when the deposit is made by certified check or cashier’s check;

(2) when the deposit is made by a check or draft representing loan proceeds issued by a federally or state-chartered bank, savings bank, savings and loan association, credit union, or other duly licensed or chartered institutional lender;

(3) when the deposit is made by a bank check, official check, treasurer’s check, money order, or other such instrument issued by a bank, savings and loan association, or credit union when the lawyer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the lawyer’s trust account within a reasonable period of time;

(4) when the deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the state of Florida or on the escrow or trust account of a real estate broker licensed under applicable Florida law when the lawyer has a reasonable and prudent belief that the deposit will clear and constitute collected funds in the lawyer’s trust account within a reasonable period of time;

(5) when the deposit is made by a check issued by the United States, the State of Florida, or any agency or political subdivision of the State of Florida;

(6) when the deposit is made by a check or draft issued by an insurance

company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Florida and the lawyer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those set forth above, when it results in funds of other clients being used, endangered, or encumbered without authorization, may be grounds for a finding of professional misconduct. In any event, such a disbursement is at the risk of the lawyer making the disbursement. If any of the deposits fail, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's other clients. However, if the lawyer accepting any such check personally pays the amount of any failed deposit or secures or arranges payment from sources available to the lawyer other than trust account funds of other clients, the lawyer shall not be considered guilty of professional misconduct.

Comment

A lawyer must hold property of others with the care required of a professional fiduciary. This chapter requires maintenance of a bank or savings and loan association account, clearly labeled as a trust account and in which only client or third party trust funds are held.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if money, in 1 or more trust accounts, unless requested otherwise in writing by the client. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities.

A lawyer who holds funds for a client or third person and who determines that the funds are not nominal or short-term as defined elsewhere in this subchapter should hold the funds in a separate interest-bearing account with the interest accruing to the benefit of the client or third person unless directed otherwise in writing by the client or third person.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client. When the lawyer has a duty under applicable law to protect the third-party claim and the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, and, where appropriate, the lawyer should consider the possibility of depositing the property or funds in dispute into the registry of the applicable court so that the matter may be adjudicated.

The obligations of a lawyer under this chapter are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

Each lawyer is required to be familiar with and comply with the Rules Regulating Trust Accounts as adopted by the Supreme Court of Florida.

Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be a conversion. This does not preclude the retention of money or other property upon which a lawyer has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions or collections.

Advances for fees and costs (funds against which costs and fees are billed) are the property of the client or third party paying same on a client's behalf and are required to be maintained in trust, separate from the lawyer's property. Retainers are not funds against which future services are billed. Retainers are funds paid to guarantee the future availability of the lawyer's legal services and are earned by the lawyer upon receipt. Retainers, being funds of the lawyer, may not be placed in the client's trust account.

The test of excessiveness found elsewhere in the Rules Regulating The Florida Bar applies to all fees for legal services including retainers, nonrefundable retainers, and minimum or flat fees.

RULE 6-1.2 PUBLIC NOTICE

The Florida Bar may cause a public notice to be promulgated where and when it deems necessary, including, for example, telephone directory yellow pages, in substantially the following form:

NOTICE

FOR THE GENERAL INFORMATION OF THE PUBLIC

ATTORNEYS INDICATING "BOARD CERTIFIED," ~~OR~~ "SPECIALIST," OR "EXPERT" HAVE BEEN CERTIFIED BY THE FLORIDA BAR AS HAVING SPECIAL KNOWLEDGE, SKILLS, AND PROFICIENCY IN THEIR AREAS OF PRACTICE AND HAVE BEEN EVALUATED BY THE BAR AS TO THEIR CHARACTER, ETHICS, AND REPUTATION FOR PROFESSIONALISM IN THE PRACTICE OF LAW.

ALL PERSONS ARE URGED TO MAKE THEIR OWN INDEPENDENT INVESTIGATION AND EVALUATION OF ANY ATTORNEY BEING CONSIDERED.

This notice published by The Florida Bar Board of Legal Specialization and Education, Telephone 850/561-5600, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

**6-25. STANDARDS FOR CERTIFICATION OF A BOARD CERTIFIED
STATE AND FEDERAL GOVERNMENT AND
ADMINISTRATIVE PRACTICE LAWYER**

6-25.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a "Board Certified State and Federal Government and Administrative Practice Lawyer." The purpose of the standards is to identify those lawyers who practice law before or on behalf of state and federal government entities and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism to be properly identified to the public as certified state and federal government and administrative practice lawyers.

6-25.2 DEFINITIONS

(a) State and Federal Government and Administrative Practice. “State and federal government and administrative practice” is the practice of law on behalf of public or private clients on matters including but not limited to rulemaking or adjudication associated with state or federal government entity actions such as contracts, licenses, orders, permits, policies, or rules. State and federal government and administrative practice also includes appearing before or presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

(b) Government Entity. “Government entity” means any state agency, political subdivision, special district, or instrumentality of the state of Florida, and any federal agency, bureau, corporation, instrumentality or other government body of the United States, including the United States armed forces. This definition should be broadly construed.

(c) Lead Advocate. “Lead advocate” means serving as the primary attorney, whether as a team leader or alone, working on behalf of either a private party or a government entity. Service as a supervisor and signatory of legal documents, but without substantial participation in the preparation of those documents, does not constitute service as a lead advocate. Service in the role of lead advocate also includes presiding as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel over a dispute involving an administrative or government action.

(d) Practice of Law. The “practice of law” is defined as set forth in rule 6-3.5(c)(1).

(e) State and Federal Government and Administrative Practice Certification Committee. The state and federal government and administrative practice certification committee shall include at least 2 attorneys employed by government entities in Florida, at least 1 attorney employed by a federal government entity, and at least 3 attorneys in private practice. While all committee members should have experience in rulemaking and adjudication, the committee should also include at least 2 attorneys whose state and federal government and administrative practice is primarily non-litigation.

Rule 6-25.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant must have been engaged in a state or federal government and administrative practice for at least 5 years preceding the date of application. The years of law practice need not be consecutive.

(b) Practice Requirements. The practice requirements shall be as follows:

(1) Substantial Involvement. The applicant must demonstrate substantial involvement in a state and federal government and administrative practice during 3 of the last 5 years immediately preceding application. Any applicant who meets the practical experience requirements in subdivisions 6-25.3(b)(2)(A)-(I) below is presumed to meet this requirement.

(2) Practical Experience. The applicant must demonstrate broad substantial practical experience in state or federal government and administrative practice by providing examples of service as the lead advocate on behalf of a private client or a government entity or instrumentality. Using the point values and limitations assigned below, the applicant's experience examples from the following actions must total at least 100 points and have been performed within 20 years preceding the filing of the application:

(A) administrative hearings, involving disputed issues of material fact [Section 120.57(1), Florida Statutes] and adjudicated through final order pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (5 points each);

(B) fully-adjudicated administrative actions or rulemaking proceedings pursuant to the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-559, and other federal APA proceedings, including record review proceedings, pursuant to 5 U.S.C. §§ 701-706 (5 points each);

(C) any other fully-adjudicated state or federal administrative or civil proceeding before an administrative forum, hearing officer, magistrate, arbitrator, state or federal district, circuit or supreme court, or other forum, in which the applicant represents a party in a lawsuit brought by or against a government entity. Applicants are encouraged to identify cases involving

state or federal constitutional or statutory matters, state or federal regulations, ethics, open government, public records, or sovereign immunity. Experience working on matters exclusively involving city, county, and local government law (such as code enforcement, municipal financing and licensing, local referenda, ordinances, and zoning) does not constitute practical experience for purposes of obtaining state and federal government and administrative practice certification (5 points each);

(D) rulemaking proceedings through rule adoption pursuant to the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (3 points each);

(E) state or federal government or administrative actions as follows:

1. involvement in actions that are considered, pursuant to the Florida Administrative Procedure Act or the Federal Administrative Procedure Act, to provide a point of entry or otherwise create an opportunity for a person to seek to adjudicate legal rights in state or federal courts, or in an administrative forum. Examples may include, but are not limited to, policies, orders, emergency orders, permits, licenses, contracts, or other agency decisions, or intended decisions of state and federal government entities. Examples may not include documents requiring merely clerical completion (2 points each);

2. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a written settlement agreement was negotiated and upon which the proceeding was terminated (2 points each);

3. involvement as lead advocate in an administrative proceeding of the type identified herein, in which a proposed administrative or government action or the challenge to the action was formally withdrawn (2 points each);

(F) other actions on behalf of state or federal government agencies, including military adjudicatory or rulemaking proceedings, that are the substantial equivalent of the practical experience categories identified herein, as determined at the sole discretion of the state and federal

government and administrative practice certification committee after review of the application (1 to 4 points each);

(G) an advisory opinion issued by the Florida Commission on Ethics, Florida or United States Attorney General, or Supreme Court of Florida (1 point each);

(H) experience as legislative staff on a bill passed by the Florida Legislature and enacted into law within Chapters 119 (Public Records), 120 (Administrative Procedure Act), 286 (Open Meetings), or 287 (Procurement), Florida Statutes, or as staff for the Florida Legislature's Joint Administrative Procedures Committee on completed rulemaking initiatives (1 point each); or

(I) experience as judicial staff, or staff to an administrative law judge, arbitrator, hearing officer, or other administrative panel on fully-adjudicated cases consistent with this rule (1 point each).

The applicant may have a maximum of 40 points from examples within (F) through (I). If the applicant has no points within (A), (B), or (C), the applicant must have points from a minimum of 2 different categories within (D) through (I). The state and federal government and administrative practice certification committee may increase the number of points granted for activities of the type identified in subdivisions (b)(2)(A), (B), or (C), above, for good cause shown, such as an applicant's involvement as lead advocate in an administrative hearing that lasted more than 6 days.

(c) Peer Review. The applicant shall submit the names and addresses of 5 individuals, at least 4 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the 5 years immediately preceding application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years immediately preceding application. Administrative law judges or hearing officers applying for certification may offer the reference of an attorney who has appeared before them more than once, or, if appropriate, the reference of

the chief administrative law judge or hearing officer. In all cases, at least 2 of the attorney references must be members of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

(d) Education. The applicant must demonstrate that during the 3-year period immediately preceding the date of application, the applicant has met the continuing legal education requirements in state and federal government and administrative practice. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 50 hours for the 3 years immediately preceding the application for certification. Credit for attendance or speaking appearances at continuing legal education seminars shall be given only for programs that are directly related to state and federal government and administrative practice. In addition, the state and federal government and administrative practice certification committee may conclude that the education requirement is satisfied, in part, by 1 or more of the following:

(1) lecturing at continuing legal education seminars;

(2) authoring or editing articles or books published in professional periodicals or other professional publications;

(3) teaching courses directly related to state and federal government and administrative practice at an approved law school or other graduate level program presented by a recognized professional education association;

(4) completing such home study programs as may be approved by the board of legal specialization and education or the state and federal government and administrative practice certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; or

(5) such other methods as may be approved by the board of legal specialization and education and the state and federal government and administrative practice certification committee.

The board of legal specialization and education or the state and federal government and administrative practice certification committee shall establish policies applicable to this rule including but not limited to the method of establishment of the number of hours allocable to any of the above-listed subdivisions. Such policies shall provide the hours that shall be allocable to each separate but substantially different lecture, article, or other activity described in subdivisions (1), (2), (3), and (4) above.

(e) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in state and federal government and administrative practice to justify the representation of special competence to the legal profession and the public.

(f) Exemption. An applicant who has been substantially involved in state and federal government and administrative practice for a minimum of 20 years and who otherwise fulfills the standards set forth in rules 6-3.5(d) and 6-25.3(a)-(d), shall be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards and who meet all other requirements for certification.

6-25.4 RECERTIFICATION

Recertification shall be pursuant to the following standards:

(a) Substantial Involvement. A satisfactory showing, as determined by the board of legal specialization and education and the state and federal government and administrative practice certification committee, of continuous and substantial involvement in state and federal government and administrative practice throughout the period since the last date of certification or recertification. Any applicant who meets the practical experience and education requirements in paragraphs (b) and (c) below is presumed to meet this requirement.

(b) Practical Experience Requirement. An applicant seeking recertification must demonstrate involvement as the lead advocate on behalf of a private client or a government entity in state and federal government and administrative practice since certification or the last recertification, totaling at least 10 points as described in rule 6-25.3(b)(2)(A)-(I). For good cause shown, subject to approval by the board of legal specialization and education and the state and federal government and administrative practice certification committee, the 10-point requirement above may be waived for applicants who possess other extraordinary legal experience related to state and federal government and administrative practice. Examples of extraordinary experience may include: service as an administrative law judge; agency general counsel or other senior government attorney with supervisory responsibilities; representation of or membership on a committee working on substantial matters of state and federal government and administrative practice; and other appropriate legal experience described by the applicant.

(c) Education. The applicant must demonstrate completion of at least 90 hours of continuing legal education since the last application for certification or recertification. The continuing legal education hours must logically be expected to enhance the proficiency of attorneys who are board certified in state and federal government and administrative practice. If the applicant has not attained 90 hours of continuing legal education but has attained more than 60 hours during such period, successful passage of the examination given to new applicants shall satisfy the continuing legal education requirements. However, an applicant seeking recertification may also reduce the educational requirements in this subsection to 60 hours by demonstrating involvement as the lead advocate on behalf of a private client or a government entity in state and federal government and administrative

practice since certification or the last recertification, totaling at least 25 points as described in rule 6-25.3(b)(2)(A)-(I).

(d) Peer Review. The applicant shall submit the names and addresses of 3 individuals, at least 2 of whom are attorneys and 1 of whom is a federal, state, or administrative law judge before whom the applicant has appeared within the past 5 years preceding the application. Individuals who currently practice in the applicant's law firm or government entity may not be used as references. In lieu of a judicial reference, the applicant may provide the name and address of the head of a government entity (or a member of a collegial board that serves as the head of a government entity) if the applicant has advised or appeared before the person within the 5 years preceding the application. At least 1 attorney reference must be a member of The Florida Bar. Individuals serving as references shall be sufficiently familiar with the applicant to attest to the applicant's special competence and substantial involvement in the field of state and federal government and administrative practice, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. The board of legal specialization and education and the state and federal government and administrative practice certification committee may authorize references from persons other than attorneys and may also make such additional inquiries as they deem appropriate to determine the applicant's qualifications for certification pursuant to this rule and rule 6-3.5(c)(6).

(e) Waiver of Compliance. Any applicant for recertification who at the time of application is serving and has served full time for 3 or more years as an administrative law judge, arbitrator, hearing officer, or member of an administrative tribunal or panel is deemed to meet the recertification criteria.

6-25.5 MANNER OF LISTING AREA OF CERTIFICATION

A member having received a certificate in state and federal government and administrative practice may list the area in the manner set forth under rule 6-3.9(a) or the listing may be abridged to indicate that the member is board certified in (1) state and federal government practice; or, (2) state and federal administrative practice. A member who is certified pursuant to rule 6-25.3(f) and elects to have his or her listing limited to certification in state and federal administrative practice shall have been certified with a minimum of 25 total points from examples in rule 6-25.3(b)(2)(A), (B), and (D).

**RULE 6-26 STANDARDS FOR CERTIFICATION OF A BOARD
CERTIFIED INTELLECTUAL PROPERTY LAWYER**

RULE 6-26.1 GENERALLY

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a “Board Certified Intellectual Property Lawyer.” The purpose of the standards is to identify those lawyers who practice intellectual property law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as certified intellectual property lawyers.

RULE 6-26.2 DEFINITIONS

(a) Patent Application Prosecution. “Patent application prosecution” covers the practice of law dealing with patent rights, and covers all aspects of the U. S. Patent Statutes, 35 U.S.C. §§ 1-376, as amended; the Rules of Practice in Patent Cases, 37 C.F.R. §§ 1.1 – 1.997, as amended; the American Inventors Protection Act of 1999, United States Patent and Trademark Office (USPTO) rules of practice, the Manual of Patent Examining Procedure (MPEP), the Patent Cooperation Treaty (as modified by any later court decisions or Official Gazette notices); the Assignment, Recording and Rights of Assignee, 37 C.F.R. §§ 3.1 – 3.85, as amended; the Secrecy of Certain Inventions and Licenses to Export and File Application in Foreign Countries, 37 C.F.R. §§ 5.1 – 5.33, as amended; the Register of Government Interests in Patents, 37 C.F.R. § 3.58, as amended; and Representations of Others before the USPTO, 37 C.F.R. §§ 10.1 – 10.170, as amended, as well as representing clients in proceedings before the USPTO.

(1) A “patent” is a governmental grant derived from the United States Constitution to encourage innovation and a form of protected personal property under federal statute set forth in title 35 of the United States Code that guarantees the holder of a U.S. patent a right to exclude others from making, using, offering to sell, selling, or importing an invention for a statutory period of years.

(2) “Patent matters” consist of the areas of knowledge required of attorneys registered to practice before the USPTO, including: rules, practice, and procedure; understanding how to draft claims and the ability to properly draft claims; knowledge about preparation and prosecution of patent applications based on education in and practical experience in engineering or science; understanding the application of patent laws to that endeavor; preparation of patentability opinions; filing and prosecuting patent applications, interferences, and re-issuances; preparing opinions concerning the validity and/or infringement of patents; prosecuting patent applications at the USPTO and in foreign jurisdictions; and the re-examination of patents.

(b) Patent Infringement Litigation. “Patent infringement litigation” covers the practice of law (including substantive law, evidence, and procedure) dealing with the litigation of patents in federal district courts and appeals to the federal circuit of the United States of America, and includes: Service of Process, 37 C.F.R.

§§ 15.1 – 15.3; and Testimony of Employees and the Production of Documents in Legal Proceedings, 37 C.F.R. §§ 15.11 – 15.18. Infringement of a patent is a tort giving rise to a federal cause of action for a form of trespass. The grant of a patent by the USPTO carries with it the presumption of validity, including compliance with federal statutes. Invalidity is a defense to a claim for patent infringement and may be based on a number of factors, including: anticipation; obviousness; derivation; failure to disclose “best mode”; estoppel and laches; ineligible subject matter; lack of utility or operability; lack of enabling disclosure; claim indefiniteness; double patenting; inequitable conduct; violation of antitrust law; and non-infringement.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had a senior-level responsibility, and in which the applicant evaluated, handled, and resolved issues of fact and law in a dispute that involved a patent, either by reaching an adjudicated decision or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of patent law following briefing (e.g., a *Markman* hearing, a *Daubert* hearing, etc.); or a tribunal or jury rendered a decision following a trial, or the federal circuit court of appeals rendered a decision following an appeal. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(c) Trademark Law. “Trademark law” covers the practice of law dealing with all aspects of the Trademark Act of 1946 (the “Lanham Act”), as amended, 15 U.S.C. §§ 1051-1127, Trademark Counterfeiting Act of 1984, as amended, 18 U.S.C. § 2320, Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337 and 1526, Chapter 495 of the Florida Statutes, as amended (the “Florida Trademark Law”), and common law principles, including: advising clients as to ownership, registration, transfer, validity, dilution, enforceability, and infringement of

trademarks in the state of Florida, the United States and internationally; representing clients in proceedings before the USPTO and the Florida Department of State; and representing clients in proceedings in federal or state courts, or in arbitration, relating to the ownership, registration, licensing, transfer, validity, dilution, enforcement, and infringement of trademarks.

(1) A “trademark” is defined to include trademarks, service marks, certification marks, and collective marks. Each of these forms of marks shall have the meaning given in the Florida Trademark Law, Fla. Stat. § 495.011(1)-(4). A “trademark” is further defined to include trade dress as that term is used in the Restatement Third, Unfair Competition, Section 16, and domain names as that term is used in the Lanham Act, 15 U.S.C. § 1125(d).

(2) “Contested matters” shall be defined as hearings before a tribunal or court that are adversarial, evidentiary, and binding in which the applicant has had senior-level responsibility, and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a trademark, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(3) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; a tribunal rendered a decision on significant issues of trademark law following briefing in the USPTO; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter; however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(4) “Substantive refusal” shall be defined as refusals of trademark applications during *ex parte* USPTO prosecution under Section 2 of the Lanham Act, 15 U.S.C. § 1052.

(d) Copyright Law. “Copyright law” covers the practice of law dealing with the protection of the works of the human intellect (literature, music, art, computer programs, etc.) under the copyright laws of the United States, including: subject

matter; ownership; duration; registration; formalities; exclusive rights; transfers and licensing, including the rights and obligations of parties, appropriate terms and conditions in licensing contracts, antitrust and misuse constraints, international licensing considerations; contested matters relating to claims of infringement of copyrights and to disputes regarding the authorship, ownership, licensing, and transfer of copyrighted works, including infringement actions and defenses, remedies, jurisdiction and venue, jury considerations, federal preemption of state law; the Copyright Acts of 1909 and 1976, as amended; recent amendments to copyright law such as the Digital Millennium Copyright Act; and international aspects of copyright, including the Berne convention and other treaties on copyright and related subjects. The primary federal copyright law is contained in Title 17 of the United States Code. Generally, the practices that the copyright law is concerned with involve, but are not limited to, registration, licensing, transfer, and protection of copyrighted works.

(1) “Contested matters” shall be defined as hearings before a tribunal or court that were adversarial, evidentiary, and binding in which the applicant had a senior-level responsibility, and in which the applicant evaluated, handled, and resolved substantial issues of fact and law in a dispute that involved a copyright, either by reaching an adjudicated decision, or by achieving a settlement before final adjudication or appeal.

(2) An “adjudicated decision” shall mean a decision resulting from a proceeding in which: a tribunal rendered a decision on a motion for temporary or preliminary injunction following an evidentiary hearing involving live testimony; a tribunal rendered a decision on a motion for summary judgment; or a tribunal or jury rendered a decision following a trial. A single proceeding may generate multiple adjudicated decisions and an applicant shall receive credit for each such qualifying adjudicated decision as a separate contested matter, however, for purposes of certification, the number of adjudicated decisions from any single case shall be limited to 2.

(e) Practice of Law. The “practice of law” shall be defined as set forth in rule 6-3.5(c)(1) and rule 6-26.3(a).

(f) Intellectual Property Law Certification Committee. The intellectual property law certification committee shall consist of 9 members, including a minimum of 3 registered patent attorneys with experience in patent application

prosecution, 2 members with experience in patent infringement litigation, 2 members with experience in trademark law, and 2 members with experience in copyright law.

RULE 6-26.3 MINIMUM STANDARDS

(a) Minimum Period of Practice. The applicant shall have been engaged in the practice of law for at least 5 years immediately preceding the date of application. Notwithstanding the definition of “practice of law” in rule 6-3.5(c)(1), practicing “patent application prosecution,” as defined in section 6-26.2(a), before the USPTO as a registered patent attorney or registered patent agent shall be deemed to constitute the practice of law for purposes of the 5-year practice requirement.

(b) Substantial Involvement. Substantial involvement means at least 30 percent of the applicant’s practice during the 3 years immediately preceding application has been devoted to matters involving intellectual property law.

(c) Experience. During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) *Patent Application Prosecution.* The applicant must have handled with senior-level responsibility a minimum of 40 patent matters that involved representation of a client. The quality of the applicant’s work and the nature of the issues involved shall be a factor in determining eligibility for certification. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the intellectual property law certification committee, but written or oral supplementation (including copies of work product) may be required. For good cause shown, for satisfaction in part of the 40 patent matters that involved representation of a client, verified substantial involvement in patent matters at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) *Patent Infringement Litigation.* The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was an adjudicated decision. Additionally, applicants

shall have devoted a minimum of 800 hours per year to litigation matters generally, at least 300 hours per year of which shall have been devoted to patent infringement litigation; and applicant shall have, within the last 10 years, tried a patent infringement litigation matter to the close of testimony, verdict, or judgment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in patent infringement litigation at a government agency may be considered. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) *Trademark Law.* The applicant must have handled with senior-level responsibility either a minimum of 6 contested matters or 25 responses to substantive refusals, or a combination of the 2. Substantive refusals on which the applicant relies shall not have involved merely technical corrections, insignificant matters, or abandonment. The applicant shall submit work product samples and a transcript (if available) in each such contested matter. In addition, applicant must have engaged in at least 300 hours each year in the practice of law in which the applicant has had substantial senior-level participation in legal matters involving trademark law. Three contested matters involving in the aggregate no less than 50 hours of in-session hearing or trial shall satisfy the requirement of 6 contested matters. For good cause shown, for satisfaction in whole or in part of the requirement of 6 contested matters or 25 responses to substantive refusals, verified substantial involvement in a combination of contested matters and responses to substantive refusals shall be considered. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in trademark matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) *Copyright Law.* The applicant must have handled with senior-level responsibility a minimum of 40 substantive matters that involved representation of a client, with a minimum of 300 hours per year devoted to such matters. The ministerial preparation of a copyright registration is not considered a substantive matter for purposes of certification. The applicant shall submit work product samples and, if the applicant also relies upon participation in contested matters, the applicant shall submit transcripts (if

available) in each such contested matter. For good cause shown, for satisfaction in part of the minimum requirements, verified substantial involvement in copyright matters at a government agency may be considered in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(d) Peer Review. The applicant shall select and submit the names and addresses of at least 6 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other persons likely to be familiar with the applicant may be contacted as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

(e) Education. The applicant must demonstrate that during the 3-year period immediately preceding the filing of an application, the applicant has met the continuing legal education requirements necessary for intellectual property law certification. The required number of hours shall be established by the board of legal specialization and education and shall in no event be less than 45 hours. Accreditation of educational hours shall be subject to policies established by the intellectual property law certification committee or the board of legal specialization and education and may be satisfied by participation in 1 or more of the following activities:

(1) attendance at continuing legal education seminars for which intellectual property law certification credit has been approved;

(2) teaching a course in intellectual property law;

(3) participation as a panelist or speaker in a symposium or similar program on intellectual property law;

(4) authorship of a book, chapter, or article on intellectual property law, published in a professional publication or journal;

(5) completing such home study programs as may be approved by the board of legal specialization and education or the intellectual property law certification committee, subject to the limitation that no more than 50 percent of the required number of hours of education may be satisfied through home study programs; and

(6) such other methods as may be approved by the board of legal specialization and education and the intellectual property law certification committee.

(f) Examination. The applicant must pass an examination applied uniformly to all applicants to demonstrate sufficient knowledge, proficiency, and experience in intellectual property law sufficient to justify certification of special competence to the legal profession and the public. The examination will be comprehensive in scope and each applicant will be required to demonstrate at least some knowledge in each specific subject tested. Applicants, however, will be given the opportunity to emphasize special knowledge in 1 or more specific subject areas. An applicant who is a registered patent attorney in good standing with the USPTO shall not be required to take an examination on topics defined in rule 6-26.2(a).

(g) Exemption. An applicant may qualify for an exemption from the examination, or a portion thereof, as follows:

(1) an applicant currently certified by The Florida Bar in civil trial or business litigation shall be exempted from the portion of the examination on the litigation process, but must demonstrate knowledge of substantive law pertaining to intellectual property;

(2) an applicant who has been substantially involved in intellectual property law for a minimum of 20 years, in accordance with the standards set forth in rule 6-3.5(d), and who can demonstrate compliance with the experience requirements under rule 6-26.3(c), subdivisions (1), (2), (3), or (4) within a 10-year time frame, shall be exempt from the examination if all other requirements for certification are met. This exemption shall be applicable only

to those applicants who apply within 2 years of the effective date of the approval of this exemption.

RULE 6-26.4 RECERTIFICATION

To be eligible for recertification, an applicant must meet the following requirements:

(a) Substantial Involvement. The applicant must show continuous and substantial involvement in matters involving intellectual property law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement shall be made by showing that intellectual property law comprises at least 30 percent of the applicant's practice.

(b) Experience. During the 5 years immediately preceding application, the applicant must comply with the experience requirements in at least 1 of the following categories:

(1) Patent Application Prosecution. The applicant must have handled with senior-level responsibility a minimum of 30 patent matters that involved representation of a client. For good cause shown, for satisfaction in part of the 30 patent matters, the applicant may provide verified substantial involvement in patent matters at a government agency in lieu of representation of clients. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(2) Patent Infringement Litigation. The applicant must have handled with senior-level responsibility a minimum of 5 contested matters in litigation or on appeal in which there was an adjudicated decision. The applicant may substitute completion of an approved, multi-day, intensive advocacy-training course where the applicant performed and was satisfactorily critiqued by recognized experts for 2 of the 5 contested matters. For good cause shown, for satisfaction in part of the 5 contested matters, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a patent, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(3) Trademark Law. The applicant must have handled either a minimum of 4 contested matters or 15 responses to substantive refusals of the application. In addition, an applicant must have engaged in at least 300 hours each year in the practice of law in which the applicant had substantial and direct senior-level participation in legal matters involving trademark law. Two contested matters involving in the aggregate no less than 2 days of in-session hearing or trial shall satisfy the requirement of 4 contested matters. For good cause shown, for satisfaction in whole or in part of the requirements, verified substantial involvement in a combination of contested matters and responses to substantive refusals resulting in allowance in satisfaction of the minimum number of matters shall be considered. The applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a trademark, or may serve as an advocacy instructor in an intellectual property continuing legal education program, in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(4) Copyright Law. The applicant must have handled with senior-level responsibility a minimum of 30 matters that involved representation of a client. For good cause shown, for satisfaction in whole or in part of the requirement, the applicant may serve as a judge or an arbitrator in a contested matter involving an adjudicated decision concerning a copyright, or may serve as an advocacy instructor in an intellectual property law continuing legal education program in lieu of senior-level responsibility as an advocate for a party. Verified substantial involvement in other areas of intellectual property law may also be considered to demonstrate overall proficiency.

(d) Peer Review. The applicant must submit the names and addresses of at least 3 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise practice law in an of-counsel relationship with the applicant, to serve as references. Such references will be contacted and requested to attest to the applicant's special competence and substantial involvement in intellectual property law, as well as to the applicant's character, ethics, and reputation for professionalism in the practice of law. Individuals submitted as references shall be substantially involved in intellectual property law and shall be familiar with the applicant's practice. In addition, other attorneys, judges, employees at government agencies, or other persons likely to be familiar with the applicant may be contacted

as deemed necessary by the intellectual property law certification committee and the board of legal specialization and education.

(e) Education. The applicant must have completed at least 50 hours of approved continuing legal education in intellectual property law, in accordance with the standards set forth in rule 6-26.3(e) since the filing of the last application for certification.

RULE 10-2.1 GENERALLY

Whenever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the state of Florida. For purposes of this chapter:

(1) It shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form. Legal forms approved by the Supreme Court of Florida which may be completed as set forth herein shall only include and are limited to forms approved by the Supreme Court of Florida pursuant to rule 10-2.1(a) [formerly rule 10-1.1(b)] of the Rules Regulating The Florida Bar, the Family Law Forms contained in the Florida Family Law Rules of Procedure, and the Florida Supreme Court Approved Family Law Forms contained in the Florida Family Law Rules of Procedure.

(A) Except for forms filed by the petitioner in an action for an injunction for protection against domestic or repeat violence, the following language shall appear on any form completed by a nonlawyer and any individuals assisting in the completion of the form shall provide their name, business name, address, and telephone number on the form:

This form was completed with the assistance of:

Name of Individual

Name of Business

Address

Telephone Number

(B) Before a nonlawyer assists a person in the completion of a form, the nonlawyer shall provide the person with a copy of a disclosure which contains the following provisions:

(Name) told me that he/she is a nonlawyer and may not give legal advice, cannot tell me what my rights or remedies are, cannot tell me how to testify in court, and cannot represent me in court.

Rule 10-2.1(b) of the Rules Regulating The Florida Bar defines a paralegal as a person who works under the 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. Only persons who meet the definition may call themselves paralegals. (Name) informed me that he/she is not a paralegal as defined by the rule and cannot call himself/herself a paralegal.

(Name) told me that he/she may only type the factual information provided by me in writing into the blanks on the form. (Name) may not help me fill in the form and may not complete the form for me. If using a form approved by the Supreme Court of Florida, (Name) may ask me factual questions to fill in the blanks on the form and may also tell me how to file the form.

____ I can read English

____ I cannot read English but this notice was read to me by (Name) in (Language) which I understand.

(C) A copy of the disclosure, signed by both the nonlawyer and the person, shall be given to the person to retain and the nonlawyer shall keep a copy in the person's file. The nonlawyer shall also keep copies for at least 6 years of all forms given to the person being assisted. The disclosure does not act as or constitute a waiver, disclaimer, or limitation of liability.

(2) It shall constitute the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules ~~to offer or provide legal services directly to the public or for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules~~ to use the title paralegal, legal assistant, or other similar term in offering to provide or in providing legal services or legal forms preparation services directly to the public.

(3) It shall constitute the unlicensed practice of law for a lawyer admitted in a state other than Florida to advertise to provide legal services in Florida which the lawyer is not authorized to provide.

(b) Paralegal or Legal Assistant. A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the 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. A nonlawyer or a group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the lawyer supervision required under this rule.

(c) Nonlawyer or Nonattorney. For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar. A suspended lawyer, while a member of The Florida Bar during the period of suspension as provided elsewhere in these rules, does not have the privilege of practicing law in Florida during the period of suspension.

(d) This Court or the Court. This court or the court shall mean the Supreme Court of Florida.

(e) Bar Counsel. Bar counsel is a member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(f) Respondent. A respondent is a nonlawyer who is accused of engaging in the unlicensed practice of law or whose conduct is under investigation.

(g) Referee. A referee is the judge or retired judge appointed to conduct proceedings as provided under these rules.

(h) Standing Committee. The standing committee is the committee constituted according to the directives contained in these rules.

(i) Circuit Committee. A circuit committee is a local unlicensed practice of law circuit committee.

(j) UPL Counsel. UPL counsel is the director of the unlicensed practice of law department and an employee of The Florida Bar employed to perform such duties, as may be assigned, under the direction of the executive director.

(k) UPL. UPL is the unlicensed practice of law.

(l) The Board or Board of Governors. The board or board of governors is the board of governors of The Florida Bar.

(m) Designated Reviewer. The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned by the board of governors with respect to a particular circuit committee or matter. If a designated reviewer recuses or is unavailable, any other board member may serve as designated reviewer in that matter. The designated reviewer will be selected, from time to time, by the board members from the circuit of such circuit committee. If circuits have an unequal number of circuit committees and board members, review responsibility will be reassigned, from time to time, to equalize workloads. On such reassignments responsibility for all pending cases from a particular committee passes to the new designated reviewer. UPL staff counsel will be given written notice of changes in the designated reviewing members for a particular committee.

(n) Executive Committee. The executive committee is the executive committee of the board of governors of The Florida Bar. All acts and discretion required by the board under these rules may be exercised by its executive committee between meetings of the board as may from time to time be authorized by standing policies of the board of governors.

RULE 10-3.1 GENERALLY

(a) Appointment and Terms. The standing committee shall be appointed by the court on advice of the board of governors of The Florida Bar and shall consist of 37 members, 18 of whom shall be nonlawyers. The board of governors is delegated the authority to appoint a chair and at least 1 vice-chair of the standing committee, both of whom may be nonlawyers. One-third of the members of the standing committee shall constitute a quorum. All appointments to the standing committee shall be for a term of 3 years. No member shall be appointed to more than 2 full consecutive terms. The members of the standing committee shall not be subject to removal by the court during their terms of office except for cause. Cause shall include unexcused failures to attend scheduled meetings, the number of which shall be set forth by the standing committee in an attendance policy.

(b) Recusal. No member of the standing committee shall perform any standing committee function when that member:

(1) is related by blood or marriage to the complainant or respondent;

(2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;

(3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or

(4) is prejudiced or biased toward either the complainant or the respondent.

Upon notice of any of the above prohibitions the affected members should recuse themselves from further proceedings. The standing committee chair shall have the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

RULE 10-4.1 GENERALLY

(a) Appointment and Terms. Each circuit committee shall be appointed by the court on advice of the board of governors and shall consist of not fewer than 3 members, at least one-third of whom shall be nonlawyers. All appointees shall be residents of the circuit or have their principal office in the circuit. The terms of the members of circuit committees shall be for 3 years from the date of appointment by the court or until such time as their successors are appointed and qualified. Continuous service of a member shall not exceed 2 consecutive 3-year terms. A member shall not be reappointed for a period of 1 year after the end of the member's second term provided, however, the expiration of the term of any member shall not disqualify that member from concluding any investigations pending before that member. Any member of a circuit committee may be removed from office by the board of governors.

(b) Committee Chair. For each circuit committee there shall be a chair designated by the designated reviewer of that committee. A vice-chair and secretary may be designated by the chair of each circuit committee. The chair shall be a member of The Florida Bar.

(c) Quorum. Three members of the circuit committee or a majority of the members, whichever is less, shall constitute a quorum.

(d) Panels. The circuit committee may be divided into panels of not fewer than 3 members, 1 of whom must be a nonlawyer. Division of the circuit committee into panels shall only be upon concurrence of the designated reviewer and the chair of the circuit committee. The 3-member panel shall elect 1 of its members to preside over the panel's actions. If the chair or vice-chair of the circuit committee is a member of a 3-member panel, the chair or vice-chair shall be the presiding officer.

(e) Duties. It shall be the duty of each circuit committee to investigate, with dispatch, all reports of unlicensed practice of law and to make prompt report of its investigation and findings to bar counsel. In addition, the duties of the circuit committee shall include, but not be limited to:

(1) exercising final authority to close cases not deemed by the circuit committee to warrant further action by The Florida Bar except those cases to

which UPL staff counsel objects to the closing of the case;

(2) exercising final authority to close cases proposed to be resolved by cease and desist affidavit except those cases to which UPL staff counsel objects to the acceptance of a cease and desist affidavit;

(3) forwarding to bar counsel for review by the standing committee recommendations for closing cases by a cease and desist affidavit that includes a monetary penalty not to exceed \$500 per incident; and

(4) forwarding to UPL staff counsel recommendations for litigation to be reviewed by the standing committee.

(f) Circuit Committee Meetings. Circuit committees should meet at regularly scheduled times, not less frequently than quarterly each year. Either the chair or vice chair may call special meetings. Circuit committees should meet at least monthly during any period when the committee has 1 or more pending cases assigned for investigation and report. The time, date and place of regular monthly meetings should be set in advance by agreement between each committee and bar counsel.

(g) Recusal. No member of a circuit committee shall perform any circuit committee function when that member:

(1) is related by blood or marriage to the complainant or respondent;

(2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;

(3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or

(4) is prejudiced or biased toward either the complainant or the respondent.

Upon notice of any of the above prohibitions the affected members should recuse themselves from further proceedings. The circuit committee chair shall have the power to disqualify any member from any proceeding in which any of the

above prohibitions exists and is stated of record or in writing in the file by the chair.

RULE 10-7.2 PROCEEDINGS FOR INDIRECT CRIMINAL CONTEMPT

(a) Petitions for Indirect Criminal Contempt. Nothing set forth herein shall be construed to prohibit or limit the right of the court to issue a permanent injunction in lieu of or in addition to any punishment imposed for an indirect criminal contempt.

(1) Upon receiving a sworn petition of the president, executive director of The Florida Bar, or the chair of the standing committee alleging facts indicating that a person, firm, or corporation is or may be unlawfully practicing law or has failed to pay restitution as provided elsewhere in this chapter, and containing a prayer for a contempt citation, the court may issue an order directed to the respondent, stating the essential allegations charged and requiring the respondent to appear before a referee appointed by the court to show cause why the respondent should not be held in contempt of this court for the unlicensed practice of law or for the failure to pay restitution as ordered. The referee shall be a circuit judge of the state of Florida. The order shall specify the time and place of the hearing, and a reasonable time shall be allowed for preparation of the defense after service of the order on the respondent.

(2) The respondent, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer such order by way of explanation or defense. All motions and the answer shall be in writing. A respondent's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

(b) Indigency of Respondent. Any respondent who is determined to be indigent by the referee shall be entitled to the appointment of counsel.

(1) *Affidavit.* A respondent asserting indigency shall file with the referee a completed affidavit containing the statutory financial information required ~~hereinto~~ to be submitted to the clerk of court when determining indigent status and stating that the affidavit is signed under oath and under penalty of perjury. ~~The affidavit must contain the following financial information and calculations as to the respondent's income:~~

~~(A) Net income. Total salary and wages, minus deductions required by law, including court ordered support payments.~~

~~(B) Other income. Including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts.~~

~~(C) Assets. Including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat, motor vehicle, or other tangible property.~~

(2) *Determination.* After reviewing the affidavit and questioning the respondent, the referee shall make one of the following determinations: the respondent is indigent; or the respondent is not indigent.

In making this determination, the referee shall consider the applicable statutory criteria used by the clerk of court when determining indigent status and the applicable statutory factors considered by a court when reviewing that determination.

~~A respondent is indigent if:~~

~~(A) the income of the person is equal to or below 200 percent of the then current federal poverty guidelines prescribed for the size of the household of the respondent by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families Cash Assistance, poverty related veterans' benefits, or Supplemental Security Income (SSI); or~~

~~(B) the person is unable to pay for the services of an attorney without substantial hardship to his or her family.~~

(3) *Presumption.* In proceedings for the determination of indigency the referee shall determine whether any of the following facts exist, and the existence of any such fact shall create a presumption that the respondent is not indigent:

~~(A) the respondent has been released on bail in the amount of \$5,000 or more;~~

~~(B) the respondent owns, or has equity in, any intangible or tangible personal property or real property, or the expectancy of an interest in any such property; or~~

~~(C) the respondent retained private counsel immediately before or after filing the affidavit asserting indigency as required herein.~~

(c) Proceedings Before the Referee. Proceedings before the referee shall be in accordance with the following:

(1) Venue for the hearing before the referee shall be in the county where the respondent resides or where the alleged offense was committed, whichever shall be designated by the court.

(2) The court or referee may issue an order of arrest of the respondent if the court or referee has reason to believe the respondent will not appear in response to the order to show cause. The respondent shall be admitted to bail in the manner provided by law in criminal cases.

(3) The respondent shall be arraigned at the time of the hearing before the referee, or prior thereto upon request. A hearing to determine the guilt or innocence of the respondent shall follow a plea of not guilty. The respondent is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and confront witnesses against the respondent. The respondent may testify in the respondent's own defense. No respondent may be compelled to testify. A presumption of innocence shall be accorded the respondent. The Florida Bar, which shall act as prosecuting authority, must prove guilt of the respondent beyond a reasonable doubt.

(4) Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued in the name of the court by the referee upon request of a party. Failure or refusal to comply with any subpoena shall be contempt of court and may be punished by the court or by any circuit court where the action is pending or where the contemnor may be found, as if said refusal were a contempt of that court.

(5) The referee shall hear all issues of law and fact and all evidence and

testimony presented shall be transcribed.

(6) At the conclusion of the hearing, the referee shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the respondent has been found and adjudicated guilty, and the costs of prosecution, including investigative costs and restitution, if any, shall be included and entered in the judgment rendered against the respondent. The amount of restitution shall be specifically set forth in the judgment and shall not exceed the amount paid to respondent by complainant(s). The judgment shall also state the name of the complainant(s) to whom restitution is to be made, the amount of restitution to be made, and the date by which it shall be completed. The referee shall have discretion over the timing of payments, over how those payments are to be distributed to multiple complainant(s), and whether restitution shall bear interest at the legal rate provided for judgments in this state. In determining the amount of restitution to be paid to complainant(s), the referee shall consider any documentary evidence that shows the amount paid to respondent by complainant(s), including cancelled checks, credit card receipts, receipts from respondent, and any other documentation evidencing the amount of payment. Nothing in this section shall preclude an individual from seeking redress through civil proceedings to recover fees or other damages.

(7) Prior to the pronouncement of a recommended sentence upon a judgment of guilty, the referee shall inform the respondent of the accusation and judgment and afford the opportunity to present evidence of mitigating circumstances. The recommended sentence shall be pronounced in open court and in the presence of the respondent.

(d) Review by the Supreme Court of Florida. The judgment and recommended sentence, upon a finding of "guilty," together with the entire record of proceedings shall then be forwarded to this court for approval, modification, or rejection based upon the law. The respondent may file objections, together with a supporting brief or memorandum of law, to the referee's judgment and recommended sentence within 30 days of the date of filing with the court of the referee's judgment, recommended sentence, and record of proceedings. The Florida Bar may file a responsive brief or memorandum of law within 20 days after service of respondent's brief or memorandum of law. The respondent may file a reply brief or memorandum of law within 10 days after service of The Florida

Bar's responsive brief or memorandum of law.

(e) Fine or Punishment. The punishment for an indirect criminal contempt under this chapter shall be by fine, not to exceed \$2500, imprisonment of up to 5 months, or both.

(f) Costs and Restitution. The court may also award costs and restitution.

RULE 14-2.1 GENERALLY

(a) Appointment of Members; Quorum. The board of governors shall appoint a standing committee on grievance mediation and fee arbitration comprised of:

- (1) 6 lawyers who are ~~supreme court certified mediators~~certified as mediators under this chapter;
- (2) 3 nonlawyers who are ~~supreme court certified mediators~~certified as mediators under this chapter;
- (3) 6 lawyers who are certified as arbitrators under this chapter; and
- (4) 3 nonlawyers who are certified as arbitrators under this chapter.

The board of governors will appoint a chair and vice-chair of the committee from the members listed above. A majority of members of the committee constitutes a quorum. The lawyer members of the committee shall ~~have been members of The Florida Bar for at least 5 years~~be members of The Florida Bar in good standing.

(b) Terms. All members shall be appointed for 3-year terms, each term commencing on July 1 of the year of appointment and ending on June 30 of the third year thereafter. Terms shall be staggered so that one-third of the members of the committee shall be appointed each year. No committee member may serve for more than 2 consecutive full terms.

(c) Duties. The standing committee shall administer the program, certify mediators and arbitrators for the program, promulgate necessary standards, forms, and documents, and make recommendations, as necessary, to the board of governors for changes in the program.

14 GRIEVANCE MEDIATION AND FEE ARBITRATION
14-6 NATURE ~~AND~~; ENFORCEMENT OF AWARD; EFFECT OF
FAILURE TO PAY

RULE 14-6.1 BINDING NATURE; ENFORCEMENT; AND EFFECT OF
FAILURE TO PAY AWARD

(a) **Binding Determination.** The parties to a proceeding under these rules shall be bound by the terms of the arbitration award subject to those rights and procedures to set aside or modify the award provided by chapter 682, Florida Statutes, or by the terms of an agreement reached in mediation.

(b) **Enforcement of Determination.** In addition to any remedy authorized in this chapter, an arbitration award may be enforced as provided in chapter 682, Florida Statutes.

(c) **Effect of Failure to Pay Award.** Failure of a member of the bar to pay an award within 90 days of the date on which the award became final, without just cause for such failure, shall result in the member being delinquent and not authorized to practice law, as provided elsewhere in these rules defining delinquent members.

RULE 17-1.2 DEFINITIONS

(a) Authorized House Counsel. An "authorized house counsel" is any person who:

(1) is a member in good standing of the entity governing the practice of law of each state (other than Florida), territory, or the District of Columbia in which the member is licensed;

(2) is not subject to an outstanding order of reprimand, censure or disbarment, permanent or temporary, for professional misconduct by the bar or courts of any jurisdiction;

(3) is not subject to a disciplinary proceeding;

(4) has not been permanently denied admission to practice before the bar of any jurisdiction based upon such person's character or fitness;

(5) agrees to abide by the Rules Regulating The Florida Bar (including, without limitation, rules 6-10.1 et seq.) and submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;

(6) is ~~residing in Florida and~~ exclusively employed by a business organization located in the state of Florida and is residing in Florida or relocating to the state of Florida in furtherance of such employment within 6 months of such application under this chapter and receives or shall receive compensation for activities performed for that business organization; and

(7) has complied with rule 17-1.4.

(b) Business Organization. A "business organization" for the purpose of this rule is a corporation, partnership, association or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this state that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization by the activities of the authorized house counsel. For purposes of this rule, a "business organization" does

not include a governmental entity, governmental subdivision, political subdivision, school board, or any other entity that has the authority to levy a tax.

RULE 17-1.3 ACTIVITIES

(a) Authorized Activities. An authorized house counsel, as an employee of a business organization, may provide legal services in the state of Florida to the business organization for which a registration pursuant to rule 17-1.4 is effective, provided, however, that such activities shall be limited to:

(1) the giving of legal advice to the directors, officers, employees, and agents of the business organization with respect to its business and affairs;

(2) negotiating and documenting all matters for the business organization;
and

(3) representation of the business organization in its dealings with any administrative agency or commission having jurisdiction; provided however, authorized house counsel shall not be permitted to make appearances as counsel in any court, administrative tribunal, agency, or commission situated in the state of Florida unless the rules governing such court or body shall otherwise authorize, or the attorney is specially admitted by such court or body in a case.

(b) Disclosure. ~~Authorized house counsel, in undertaking legal services permitted pursuant to subdivision 17-1.3(a)(2) or (3), shall disclose their capacity by written or printed communication that shall evidence both the name for the appropriate business organization and the title or function of the authorized house counsel and that they are not licensed to practice in the state of Florida. Such communication shall be transmitted in such manner as reasonably contemplated to create an awareness of the authorized house counsel's status with respect to the relevant activity. In any communication with individuals/organizations outside of the business organization, authorized house counsel shall disclose that they are not licensed to practice law in the state of Florida. If the communication is in writing, authorized house counsel shall disclose in writing the name of the business organization, their title or function, and that they are not licensed to practice law in the state of Florida. For example, the disclosure may state "J. Doe, XYZ Corporation, Authorized House Counsel, member(name of other state bar)..... only or not a member of The Florida Bar." In performing activities under this subdivision, authorized house counsel shall not represent themselves to be members of The Florida Bar licensed to practice law in this state.~~

(c) Limitation on Representation. In no event shall the activities permitted hereunder include the individual or personal representation of any shareholder, owner, partner, officer, employee, servant, or agent in any matter or transaction or the giving of advice therefore unless otherwise permitted or authorized by law, code, or rule or as may be permitted by subdivision 17-1.3(a).

(d) Opinions to Third Parties. An authorized house counsel shall not express or render a legal judgment or opinion to be relied upon by any person or party other than in the course of the authorized house counsel's representation of the business organization in which the authorized house counsel is employed.