

**IN THE SUPREME COURT OF FLORIDA**

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

CASE NO. SC

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

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

**I**

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

**II**

3. The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. Each such entry additionally reflects other information regarding the development of these proposals as specified in this court's guidelines for bar rules amendments: *i.e.*, an explanation of each amendment; the reasons for each change; the sources of each proposal; the names of groups or individuals who commented or collaborated on a proposal during its development; voting records of pertinent committees and the bar's governing board; and, dissenting views within the board, if any, regarding each proposal.

4. As the following list reflects, one bar rule was the object of two substantively different amendments. Those matters were considered independent of one another by the board of governors, and proceeded separately through the bar's rulemaking processes. Likewise, these two amendments proposed for the same rule are presented as separate items to better reflect the distinctive aspects of their development and consideration.

### III

#### Chapter 1 General

#### Subchapter 1-7. Membership Fees and Fiscal Control

#### **Rule 1-7.3 Membership Fees**

*Explanation:* Creates new subdivision (f), to allow for an exemption from membership fees for activated reserve members of the armed services.

*Reasons:* To accommodate activated reservists with regard to annual membership fees in a manner consistent with §455.02, Fla. Stat., applicable to other regulated professions in this state.

*Source:* Member commentary. *See:* July 27, 2002 correspondence from Robert J. Perry to Johnny Smith, Membership Records Department; August 28, 2002 correspondence from John F. Harkness, Jr., Executive Director, to Robert J. Perry; and May 19, 2005 correspondence from Jerald S. Beer, Chair of the Budget Committee to Kim F. Heller II, Chair of the Military Affairs Committee – (all discussing this proposal) in Appendix D.

*Commentary / Collaboration:* Military Affairs Committee

*Committee Action:* Budget Committee requested input from Military Affairs Committee; amendment drafted by Military Affairs Committee and further refined by Budget Committee; Rules Committee favorably reported by voice vote of 5-0 on November 16, 2005 conference call.

*Board Action:* Board of Governors approved as a consent agenda item at February 17, 2006 meeting.

*Dissent:* None.

#### Subchapter 1-12. Amendments

#### **Rule 1-12.2 Supreme Court Procedures for Review of Proposed Amendments**

*Explanation:* New rule, which sets forth a court conference and dialogue process – rather than a case or controversy format – as a component of the

procedures for considering amendments to the Rules Regulating The Florida Bar.

*Reasons:* As this Court appears to have determined with regard to the issues of privacy and court records, the formality and rigidity of oral argument as the exclusive means for consideration of certain administrative matters within the judicial branch can be occasionally replaced by more informal dialogue among justices, proponents, commentators, and other interested parties – with seemingly beneficial results. The variety of matters that the Rules Regulating The Florida Bar deal with, coupled with the number of resource people often needed for a meaningful presentation of proposed rules changes to this Court, particularly suggest this alternative approach within the bar’s rulemaking processes.

*Source:* Bar staff.

*Commentary/Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee approved by voice vote of 7-0 on August 25, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005; on October 21, 2005 Board of Governors agenda for first reading; on December 16, 2005 Board of Governors agenda for final action.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

## Chapter 2 Bylaws of The Florida Bar

### Subchapter 2-7. Sections

#### **Rule 2-7.3 Creation of Sections and Divisions**

*Explanation:* Changes the name of the “Out-Of-State Practitioners” Division to the “Out-Of-State” Division; adds appropriate subdivision titles consistent with controlling editorial protocols and redesignates other affected entries as necessary.

*Reasons:* Deletion of “Practitioners” in the division’s name better describes the entire division membership, and is considered more inclusive.

*Source:* Out-of-State Practitioners Division Executive Committee

*Commentary/Collaboration:* None.

*Committee Action:* Out-of-State Practitioners Division Executive Committee unanimously approved on June 24, 2005; Program Evaluation Committee favorably reported by voice vote of 6-0 on August 25, 2005; Rules Committee favorably reported by voice vote of 5-0 on August 25, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at October 21, 2005 meeting.

*Dissent:* None.

## Chapter 3 Rules of Discipline

### Subchapter 3-2 Definitions

#### **Rule 3-2.1 Generally**

*Explanation:* Within subdivision (p) – regarding the designated reviewer – deletes various provisions related to the assignment of other specific duties by the board of governors, service of other board members as replacement reviewers in the event of a designated reviewer’s recusal or unavailability, selection of a designated reviewer by those board members from the circuit of the grievance committee’s jurisdiction, and the reassignment of reviewer responsibility within circuits with unequal numbers of board members and grievance committees.

*Reasons:* Revised to conform with current bar practices.

*Source:* Disciplinary Procedure Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee approved by voice vote of 7-0 on September 23, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005.

*Board Action:* Board of Governors approved by voice vote at February 17, 2006 meeting.

*Dissent:* None.

### Subchapter 3-5 Types of Discipline

#### **Rule 3-5.1 Generally**

*Explanation:* Within subdivision (b)(3), adds language to reflect that respondent is responsible for the \$1250 administrative fee if guilty of minor misconduct.

*Reasons:* Clarifies that the administrative fee in rule 3-7.6(q)(1)(I) is applicable in minor misconduct cases.

*Source:* Disciplinary Procedure Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on January 27, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on March 14, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at April 8, 2005 meeting.

*Dissent:* None.

Subchapter 3-6 Employment of Certain Attorneys or Former Attorneys

**Rule 3-6.1 Generally**

*Explanation:* Throughout entire rule, clarifies the limitations imposed on suspended, disbarred, or disciplinary resigned attorneys when they are employed by lawyers and law firms.

*Reasons:* Various oral observations from members that the current rule is confusing and should be clarified.

*Source:* Member commentary.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by vote of 5-0 on June 2, 2005; Rules Committee favorably reported by voice vote of 6-0 on August 8, 2005; Rules Committee reconfirmed favorable vote on August 25, 2005 by voice vote of 5-0.

*Board Action:* Board of Governors approved as a consent agenda item at October 21, 2005 meeting.

*Dissent:* None.

Subchapter 3-7 Procedures

**Rule 3-7.5 Procedures Before the Board of Governors**

*Explanation:* This is first of two different proposals for amendment of this rule. Within subdivision (a), deletes second sentence regarding the authority of a designated reviewer, upon review of grievance committee action, to either request that the committee reconsider its action or to refer the action to the board of governors for its review.

*Reasons:* Deleted due to redundancy of current provision.

*Source:* Disciplinary Procedure Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on September 23, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005.

*Board Action:* Board of Governors approved by voice vote at February 17, 2006 meeting.

*Dissent:* None.

**Rule 3-7.5 Procedures Before the Board of Governors**

*Explanation:* This is second of two different proposals for amendment of this rule. Within subdivision (a), clarifies that a request by a designated reviewer for

grievance committee reconsideration or referral to the disciplinary review committee shall be submitted to bar counsel; defines “in writing” for purposes of this subdivision; clarifies how bar counsel processes requests for reconsideration, to include notice to respondent and complainant; confirms that procedures in rule 3-7.4 apply to reconsiderations, and that the bar as a party in disciplinary matters has no authority to adjudicate rights; other edits attempt to clarify current verbiage or reformat the remainder of existing rule to accommodate these proposed changes.

*Reasons:* The rule presently lacks any definition of the term "in writing." Therefore, for clarity, the proposed amendment seeks to define it as typewritten, handwritten, electronic-mail, and facsimile transmissions. Further, the current rule contains no guidance for handling matters referred by the designated reviewer for further action. The proposed amendment suggests a procedure for processing those matters.

*Source:* Supreme Court of Florida direction.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee approved proposed amendments by vote of 4-0 on October 14, 2004; draft forms were reviewed and approved by Disciplinary Procedure Committee on December 9, 2004; Rules Committee favorably reported by fax/email vote of 6-0 on January 10, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at April 8, 2005 meeting.

*Dissent:* None.

### **Rule 3-7.6 Procedures Before a Referee**

*Explanation:* Within subdivision (n), adds new subdivision (3) to state that the referee prepares the record with the assistance with bar counsel, certifies that the record is complete, serves a copy of the index on the respondent and the bar, and files the record with the court; adds new subdivision (4) to confirm that the respondent and bar may seek to supplement the record or have items removed via appropriate motion to the referee within 15 days of service of the index, and to provide for review of any denial of such motion.

*Reasons:* The rule now requires that a referee prepare the record and file it with the court. Currently, the clerk's office advises that such records are poorly prepared and seeks relief from the bar. Recently, the Special Commission on Lawyer Regulation recommended that bar counsel be required to assist the referee in preparing the record in the referee's office and that the respondent be allowed an opportunity to seek to supplement or remove items from the record, with right of

review consistent with rule 3-7.7. These proposed amendments seek to address those issues.

*Source:* Oral commentary from the Clerk of the Supreme Court of Florida.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on September 23, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005.

*Board Action:* Board of Governors approved by voice vote at February 17, 2006 meeting.

*Dissent:* None.

### **Rule 3-7.11 General Rule of Procedure**

*Explanation:* Within subdivision (f) – regarding contempt matters – adds new subdivision (6) to specify that a referee shall prepare and file a report and the record in such cases consistent with rule 3-7.6; also adds new subdivision (7) to confirm that any party to such contempt proceedings may seek review of the referee’s report pursuant to rule 3-7.7.

*Reasons:* These amendments are proposed to address concerns expressed by the clerk regarding the absence within the current rules relating to contempt of any provision that specifically authorizes such referrals to a referee. The proposal codifies such a procedure for supreme court action.

*Source:* Oral commentary from the Clerk of the Supreme Court of Florida.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by voice vote of 7-0 on September 23, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

*Dissent:* None.

### **Rule 3-7.16 Limitation on Time to Bring Complaint**

*Explanation:* Within subdivision (a), adds provision stating that a reopened disciplinary investigation shall not be time 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 shall not be barred if reopened within 1 year of the conclusion of the proceeding on which the deferral is based; amends subdivision title to additionally reference reopened cases; amends subdivision (b),

to extend its exception from time limitations to the reopening of any matter alleging theft or conviction of a felony criminal offense; amends subdivision (c), to extend its tolling provisions to the reopening of any matter where fraud, concealment or misrepresentation is shown to have prevented discovery of the matter.

*Reasons:* This proposed amendment is intended to address circumstances where complaints of disciplinary misconduct are timely filed, but are closed by reason of deferral pursuant to current bar policy and rule 3-7.4. The suggested revision anticipates that, after other tribunals have addressed the lawyer conduct in question, further bar action may be sought by refiling of the disciplinary complaint. In such circumstances, this amendment would effectively relate back to the filing date of the original complaint for purposes of analysis of the 6-year statute of limitations, as long as a successor complaint was refiled within 1 year after conclusion of the proceedings on which any deferral was based. For example, a timely filed complaint about issues that are also pending in civil litigation may be deferred under present policy, for review by the civil trial court. Once that separate review has concluded, the amendment would allow for the complaint to be refiled within 1 year after the end of the civil litigation and still be timely within the meaning of the statute of limitations for disciplinary cases.

*Source:* Disciplinary Procedure Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee discussed on August 25, 2004, October 14, 2004, and December 9, 2004; on December 10, 2004 board agenda for first reading; Disciplinary Procedure Committee discussed and approved revised draft by vote of 7-0 on January 13, 2005; Board of Governors considered at its January 28, 2005 meeting; Rules Committee favorably approved by email/fax ballot of 6-0 on March 14, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at April 8, 2005 meeting.

*Dissent:* None.

## Chapter 4 Rules of Professional Conduct

### Subchapter 4-1 Client-Lawyer Relationship

#### **Rule 4-1.5 Fees for Legal Services**

*Explanation:* Creates new subdivision (i) – "Arbitration Clauses" – that would add language permitting lawyers to contract with clients to resolve, through mandatory arbitration, any fee dispute that may arise; prohibits such arrangements unless the lawyer first advises the affected person in writing of the opportunities of

independent representation; sets forth required language for any such attorney-client agreement.

*Reasons:* The bar has received numerous inquiries regarding the use of binding arbitration to resolve fee disputes. These proposed amendments would allow such practice and are in keeping with the concept of encouraging alternative dispute resolution mechanisms – seemingly now recognized in paragraph 11 of the Statement of Client’s Rights within rule 4-1.5, which states, in pertinent part: “Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.” This suggested provision would provide safeguards for clients, by requiring a lawyer to inform the client of the client’s right to seek independent counsel in such matters, and by requiring the lawyer to include information about the rights a client would waive by entering into such an agreement.

*Source:* Board Review Committee on Professional Ethics.

*Commentary / Collaboration:* Citizens' Forum and Disciplinary Procedure Committee.

*Committee Action:* The Citizens' Forum discussed and recommended the proposed amendments to the Disciplinary Procedure Committee on May 27, 2004; Disciplinary Procedure Committee and staff drafted the amendment based on the Citizens’ Forum recommendation and added language for disclosure of such mandatory clauses and a specific procedure for giving clients advice to seek independent counsel concerning execution of such clauses; redrafted amendments, including amendments creating 4-1.5(i), and a proposed memorandum to the board explaining the Disciplinary Procedure Committee’s action were approved by a vote of 4-0; the Board of Governors reviewed them at its October 15, 2004 meeting; further clarifying edits were discussed by the Rules Committee and accepted by staff; Rules Committee favorably reported with additional edits by voice vote of 6-0 on November 22, 2004 conference call; referred back to Disciplinary Procedure Committee by board at its December 10, 2004 meeting; on January 27, 2005 Disciplinary Procedure Committee discussed board member and Rules Committee concerns regarding the addition of language indicating that a lawyer may include such provisions in a proposed contract, but the lawyer may not require such a provision as a condition of employment, as well as other comments opposing the amendments; after debate the Disciplinary Procedure Committee voted 6-0 to ask the board not to include language obligating the lawyer to accept the representation if the client rejects the provision for arbitration – premised on the committee’s view that such a limitation amounted to a reverse contract of adhesion that severely

limited the lawyer's otherwise appropriate ability to negotiate the terms of a contract.

*Board Action:* Board of Governors approved at April 8, 2005 meeting.

*Dissent:* None.

#### Subchapter 4-6 Public Service

##### **Rule 4-6.5 Voluntary Pro Bono Plan**

*Explanation:* Consistent with proposed changes in rule 2-7.3, changes references to the “Out-Of-State Practitioners” Division to the “Out-Of-State” Division.

*Reasons:* To conform with suggested amendment to rule 2-7.3.

*Source:* Out-of-State Practitioners Division Executive Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Out-of- State Practitioners Division Executive Committee unanimously approved name change on June 24, 2005; Program Evaluation Committee favorably reported by voice vote of 6-0 on August 25, 2005; Rules Committee favorably reported by voice vote of 5-0 on August 25, 2005; Board of Governors reviewed at August 26, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at October 21, 2005 meeting.

*Dissent:* None.

#### Chapter 5 Rules Regulating Trust Accounts

##### Subchapter 5-1 Generally

##### **Rule 5-1.1 Trust Accounts**

*Explanation:* Within subdivision (g)(7), allows The Florida Bar Foundation to disclose to The Florida Bar the location of an attorney's trust account and account numbers in limited circumstances and subject to maintenance of confidentiality.

*Reasons:* Bar rules lack specific authority for the foundation to disclose, upon official inquiry by bar, the location of a law firm’s trust account. This amendment allows such disclosure but allows the foundation to withhold that information which is deemed by rule or law to not be public.

*Source:* Disciplinary Procedure Committee.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by vote of 6-0 on August 18, 2005; Rules Committee favorably reported by fax/email

vote of 6-0 on September 29, 2005; Board of Governors reviewed at October 21, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

*Dissent:* None.

## Chapter 6 Legal Specialization and Education Programs

### Subchapter 6-1 Generally

#### **Rule 6-1.2 Public Notice**

*Explanation:* Adds "expert" as a descriptive term appropriate for certified lawyers; also includes new language that further informs the public that certified lawyers are evaluated as to character, ethics, and reputation for professionalism.

*Reasons:* Consistent with determinations of the bar's Standing Committee on Advertising and opinions of this Court, updates the explanation of board certification for public notices in telephone directory yellow pages. (A suggested change to R. Regulating Fla. Bar 4-7.2 – proposed by the bar in *Amendments to The Rules Regulating The Florida Bar - Advertising Rules*, Case No. 05-2194, filed on December 14, 2005 and presently pending before this Court – seeks to additionally clarify that certified lawyers may hold themselves out as experts.)

*Source:* Board of Legal Specialization and Education.

*Commentary / Collaboration:* None.

*Committee Action:* Board of Legal Specialization and Education approved 15-0 on January 21, 2005; Program Evaluation Committee, by vote of 8-0, referred back to Board of Legal Specialization and Education on April 7, 2005 for further evaluation and redrafting; Board of Legal Specialization and Education redrafted and approved 11-0 on April 29, 2005; Rules Committee favorably reported by fax/email vote of 5-0 on May 11, 2005; Program Evaluation Committee approved by vote of 8-0 on June 2, 2005; Board of Governors reviewed on June 3, 2005; Rules Committee reconfirmed its favorable report on August 8, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at August 26, 2005 meeting.

*Dissent:* None.

## Subchapter 6-25. Standards for Certification of a Board Certified State and Federal Government and Administrative Practice Lawyer

### **Rule 6-25.1 Generally**

### **Rule 6-25.2 Definitions**

### **Rule 6-25.3 Minimum Standards**

### **Rule 6-25.4 Recertification**

### **Rule 6-25.5 Manner of Certification**

*Explanation:* New subchapter, setting forth standards for an additional certification area in state and federal government and administrative practice.

*Reasons:* Addition of State and Federal Government and Administrative Practice further expands the existing certification plan as a resource for the public to identify lawyers who have met established standards in particular practice areas and who are committed to excellence and professionalism in the practice of law. The opportunity is likewise broadened for lawyers to achieve board certification as a visible way to demonstrate their commitment to quality and professionalism in the delivery of legal services.

*Source:* Board of Legal Specialization and Education.

*Commentary / Collaboration:* Government Law Section / Administrative Law Section / Program Evaluation Committee.

*Committee Action:* Initiated by the Government Law Section and later proposed jointly as Administrative and Government Law by the Administrative Law Section and Government Law Section to Board of Legal Specialization and Education on January 21, 2005; Board of Legal Specialization and Education reviewed again on April 29, 2005; area title changed to include "state and federal" to avoid confusion with the existing area: City, County, and Local Government Law. Board of Legal Specialization and Education approved name change by a vote of 8 -3; Board of Legal Specialization and Education considered further edits on June 24, 2005, but vote was deferred until final refinement by Board of Legal Specialization and Education's Rules Committee; Board of Legal Specialization and Education Rules Committee approved the draft on July 6 and circulated to the 2004-05 board. Board of Legal Specialization and Education approved the standards by vote of 10-0 during the week of July 11, 2005; Program Evaluation Committee review was set for August 26, 2005; Administrative Law Section vote by e-mail on August 19 to "rescind its implied approval" and Program Evaluation Committee review was deferred; Administrative Law Section Executive Council met September 7 and voted 10-8 to withdraw approval of the standards; Board of Legal Specialization and Education agreed to hear the concerns of the Administrative Law Section and invited representatives from both the Administrative Law Section and Government Law Section to its September 9, 2005 meeting; Board of Legal Specialization and Education, after presentations and discussion, voted 11-1 on September 9, 2005 to reaffirm its approval of the standards as "State and Federal

Government and Administrative Practice”; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005; on October 20, 2005 board meeting agenda for first reading; deferred from Program Evaluation Committee vote pending further review by Board of Legal Specialization and Education; compromise on proposed standards reached by both Administrative Law Section and Government Law Section Executive Councils during the week of October 31, 2005; Board of Legal Specialization and Education reviewed and approved changes by vote of 11-0 on November 4, 2005; Rules Committee favorably reported by voice vote of 5-0 on November 16, 2005 conference call; Program Evaluation Committee approved on December 15, 2005; Board of Governors approved waiver of second reading on December 16, 2005.

*Board Action:* Board of Governors approved waiver of second reading on December 16, 2005; Board of Governors approved by voice vote at December 16, 2005 meeting.

*Dissent:* None.

Subchapter 6-26. Standards for Certification of a Board Certified Intellectual Property Lawyer

**Rule 6-26.1 Generally**

**Rule 6-26.2 Definitions**

**Rule 6-26.3 Minimum Standards**

**Rule 6-26.4 Recertification**

*Explanation:* New subchapter, setting forth standards for an additional certification area in intellectual property law.

*Reasons:* Addition of intellectual property law further expands the existing certification plan as a resource for the public to identify lawyers who have met established standards in particular practice areas, and who are committed to excellence and professionalism in the practice of law. The opportunity is likewise broadened for lawyers to achieve board certification as a visible way to demonstrate their commitment to quality and professionalism in the delivery of legal services.

*Source:* Board of Legal Specialization and Education

*Commentary / Collaboration:* Business Law Section.

*Committee Action:* Initiated by the Intellectual Property Law Committee of the Business Law Section and first considered by Board of Legal Specialization and Education in January 2004; Board of Legal Specialization and Education discussed further in March 2005; Board of Legal Specialization and Education rejected sub-specialization and determined the proposal needed to be reworked as a single

certification area – April 2005; proponents appeared before Board of Legal Specialization and Education in June 2005 to update the members and advise that a redraft would soon be circulated; revised proposal was approved by the Business Law Section in August, 2005 and approved by Board of Legal Specialization and Education vote of 11 to 0 on September 9, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005; Program Evaluation Committee favorably reported by voice vote of 5-0 on October 19, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

*Dissent:* None.

## Chapter 10 Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law

### Subchapter 10-2 Definitions

#### **Rule 10-2.1 Generally**

*Explanation:* Within subdivision (a)(2), clarifies language regarding a person's use of the title "paralegal" or "legal assistant."

*Reasons:* The rule as currently worded prohibits an individual from using the titles "paralegal" or "legal assistant" when offering to provide or providing legal services or legal forms preparation services to the public. The implication of the wording is that nonlawyers may provide legal services to the public as long as they are not using the titles. This is incorrect, and such behavior would constitute the unlicensed practice of law. In addition, the rule now arguably allows nonlawyers to use the titles as long as they are not providing legal services or operating a forms preparation service. For example, a nonlawyer could have a business called "Paralegal Collection Agency" or "Legal Assistant Title Company." The intent of the rule as now worded was to avoid confusion on the part of the public, by limiting the use of such titles. As those titles could be used as noted above, the intent of the rule is not being met. The proposed amendments clarify when these titles may be used and more accurately reflect the intent of the rule.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* Disciplinary Procedure Committee.

*Committee Action:* Standing Committee on the Unlicensed Practice of Law approved 19-0 on June 23, 2005; referred to Disciplinary Procedure Committee and Rules Committee; Rules Committee deferred vote on August 8, 2005, Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on August 18, 2005; Rules Committee favorably reported by voice vote of 5-0 on August 25, 2005;

Board of Governors reviewed at August 26, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at October 21, 2005 meeting.

*Dissent:* None.

Subchapter 10-3. Standing Committee

**Rule 10-3.1 Generally**

*Explanation:* Adds recusal provision as new subdivision (b), consistent with current practices and similar revisions proposed for rule 10-4.1 and members of circuit unlicensed practice of law committee members; adds new subdivision titles for existing text due to insertion of these proposed changes.

*Reasons:* Current practices require recusal of unlicensed practice of law circuit and standing committee members in certain circumstance, however, there was no specific rule on this topic within chapter 10. Instead, analogous rules relating to attorney disciplinary matters were consulted for guidance. This amendment now sets forth, in unlicensed practice of law matters, the circumstances when members of the Standing Committee on the Unlicensed Practice of Law should recuse themselves.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* None.

*Committee Action:* Standing Committee on the Unlicensed Practice of Law approved by a vote of 19-0 on January 21, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on March 14, 2005; Board of Governors reviewed on April 8, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at June 3, 2005 meeting.

*Dissent:* None.

Subchapter 10-4 Circuit Committees

**Rule 10-4.1 Generally**

*Explanation:* Adds recusal provision as new subdivision (g), consistent with current practices and similar revisions proposed for rule 10-3.1 and members of the Standing Committee on the Unlicensed Practice of Law.

*Reasons:* Current practices require recusal of unlicensed practice of law circuit and standing committee members in certain circumstance, however, there was no specific rule on this topic within chapter 10. Instead, analogous rules relating to attorney disciplinary matters were consulted for guidance. This

amendment now sets forth, in unlicensed practice of law matters, the circumstances when circuit UPL committee members should recuse themselves.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* None.

*Committee Action:* Standing Committee on Unlicensed Practice of Law approved by vote of 19-0 on January 21, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on March 14, 2005; Board of Governors reviewed at April 8, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at June 3, 2005 meeting.

*Dissent:* None.

#### Subchapter 10-7 Proceedings Before a Referee

##### **Rule 10-7.2 Proceedings for Indirect Criminal Contempt**

*Explanation:* Within subdivision (b), streamlines existing verbiage by tying the determination of indigent status to applicable statutory criteria and factors.

*Reasons:* The rule tracks statutory language dealing with a clerk of court's determination of indigent status in the state courts system. To avoid having to amend bar rules each time the statute is changed, the proposed amendment ties the determination of indigent status to applicable statutory criteria and factors.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* Disciplinary Procedure Committee.

*Committee Action:* Standing Committee on Unlicensed Practice of Law approved unanimously on September 9, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005; Disciplinary Procedure Committee favorably reported by vote of 5-0 on November 8, 2005; Board of Governors reviewed at October 21, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

*Dissent:* None.

#### Chapter 14 Grievance Mediation and Fee Arbitration

##### Subchapter 14-2 Standing Committee

##### **Rule 14-2.1 Generally**

*Explanation:* Amends subdivision (a) to be consistent with the provisions regarding mediation as they relate to authority for referral to fee arbitration and referral to mediation.

*Reasons:* Grievance mediation and fee arbitration programs are administered in a common manner. In order to do so more effectively, similar procedures should be enacted for each activity. These amendments conform the procedures for fee arbitration to those now in effect for grievance mediation cases.

*Source:* Bar staff.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported by vote of 6-0 on August 18, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on September 29, 2005; Board of Governors approved on consent calendar at December 16, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at December 16, 2005 meeting.

*Dissent:* None.

## Subchapter 14-6 Nature and Enforcement of Award

### **Rule 14-6.1 Binding Nature**

*Explanation:* Adds, as new subdivision (c), provisions to confirm that a member's failure to timely pay a fee arbitration award without just cause shall result in the member being delinquent and unauthorized to practice law pursuant to rule 1-3.6; amends subchapter and rule title to reflect this new matter.

*Reasons:* The rule is no longer consistent with the delinquency provisions in rule 1-3.6, in terms of the binding nature of a fee arbitration award and the effects of any failure to pay such award. This proposed amendment gives notice in chapter 14 that failure to timely pay a fee arbitration award, without just cause, is an event that gives rise to delinquency and a corresponding inability to practice law.

*Source:* Bar staff.

*Commentary / Collaboration:* None.

*Committee Action:* Disciplinary Procedure Committee favorably reported the amendment by vote of 5-1 on January 13, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on March 14, 2005; Board of Governors reviewed at April 8, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at June 3, 2005 meeting.

*Dissent:* None.

## Chapter 17 Authorized House Counsel Rule

### Subchapter 17-1. Generally

### **Rule 17-1.2 Definitions**

*Explanation:* Within subdivision (a)(6), rearranges wording of rule to clarify that an authorized house counsel must reside in Florida or soon relocate to Florida.

*Reasons:* The rule as currently worded requires that an individual seeking authorized house counsel status reside in Florida. This conforms with the purpose of the rule which is to allow attorneys from other states to relocate to Florida to work as corporate counsel in Florida. The wording of the current rule is awkward. The amendment is more grammatically correct.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* Disciplinary Procedure Committee.

*Committee Action:* Approved unanimously (18-0) by the Standing Committee on Unlicensed Practice of Law on June 23, 2005; Rules Committee deferred vote on August 8, 2005; Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on August 18, 2005; Rules Committee favorably reported by voice vote of 5-0 on August 25, 2005; Board of Governors reviewed at August 26, 2005 meeting.

*Board Action:* Board of Governors approved as a consent agenda item at October 21, 2005 meeting.

*Dissent:* None.

### **Rule 17-1.3 Definitions**

*Explanation:* Within subdivision (b), clarifies that authorized house counsel must disclose their status as such in communications with individuals outside the corporation with which the authorized house counsel is registered and certified; provides examples of acceptable disclosure language.

*Reasons:* The rule as currently worded is confusing. This proposed amendment provides clarification and additional guidance so that the disclosure will be made properly.

*Source:* Standing Committee on the Unlicensed Practice of Law.

*Commentary / Collaboration:* Disciplinary Procedure Committee.

*Committee Action:* Approved by a vote of 19-0 by the Standing Committee on the Unlicensed Practice of Law on January 21, 2005; Rules Committee favorably reported by fax/email vote of 6-0 on March 14, 2005; on board meeting agenda for 1st reading on April 8, 2005.

*Board Action:* Board of Governors approved as a consent agenda item at June 3, 2005 meeting.

*Dissent:* None.

## IV

5. With the exception of those matters included within the cases noted in section V, *infra*, this consolidated submission includes all proposed rules changes favorably recommended by the board of governors between April 2005 and February 2006. Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of all proposals herein was published in the March 15, 2006 issue of *The Florida Bar News*. A photocopy of that publication is included with this petition, at Appendix C.

## V

6. The bar also notes that there are four other cases presently before this court – commenced by the bar or others – seeking separate amendments to the Rules Regulating The Florida Bar: *Amendments to The Rules Regulating The Florida Bar - Rules 3-5.2 and 3-7.2*, Case No. 05-1684 (filed on September 15, 2005); *Amendments to The Rules Regulating The Florida Bar - Advertising Rules*, Case No. 05-2194 (filed on December 14, 2005); *Amendments to The Rules Regulating The Florida Bar - Chapter 11, Task Force Report*, Case No. 03-122 (filed on January 24, 2003); and *Amendments to The Rules Regulating The Florida Bar - Rule 4-1.5(F)(4)(b) of the Rules of Professional Conduct*, Case No. 05-1150 (filed on June 29, 2005). Other than the connection between proposed changes to R. Regulating Fla. Bar 6-1.2 in the instant petition and suggested amendment of R. Regulating Fla. Bar 4-7.2 in Case No. 05-2194, the proposals within the instant petition are unrelated to these pending actions and may be considered independent of them.

7. On March 23, 2006, this court issued an opinion in Case No. 04-2246, *Amendments to the Rules Regulating The Florida Bar - ABA Model Rules*, effective May 22, 2006. This petition has incorporated the court's amendment to the comment relating to R. Regulating Fla. Bar 4-1.5 (Fees and Costs) and subdivision (f) and comment relating to R. Regulating Fla. Bar 5-1.1 (Trust Accounts) resulting from that opinion.

## VI

8. The full text of the proposed amendments herein is included in Appendix

A to this petition. A separate 2-column presentation follows within Appendix B, which includes extracted text of affected rules, proposed amendments thereto, and an abbreviated recitation of the explanation of and reasons for such changes as more fully expressed in this petition. Appendix D includes various communications of note that were sent or received during the rules development process, and which are specifically referenced herein where pertinent to proposed amendments.

## VII

9. If acceptable to this court, separate or advance approval of proposed new certification areas related to State and Federal Government and Administrative Practice (proposed subchapter 6-25) and Intellectual Property Law (proposed subchapter 6-26) is requested – effective immediately upon this court’s order – assuming there are no comments filed in opposition to either of these proposals.

10. Administration of the Florida Certification Plan is cyclical – beginning with application filing in the fall, testing in the spring, and the award of certification in the summer. Internal bar programming for the certification process operates in an established sequence. In order to offer these two proposed areas to lawyers for application filing in the fall of 2006, testing in the spring of 2006, and the award of certification by the summer of 2007, new certification committees must be appointed, applications disseminated, examinations developed, and other preparatory work by staff accomplished as early as possible in 2006.

11. If expeditiously authorized by this court, these two new proposed certification areas will expand that opportunity for hundreds of lawyers who may now qualify for such status, and will enhance the overall quality and value of the program for the benefit of countless consumers of legal services.

## VIII

12. As to all other amendments sought herein, the bar requests that any such changes be made effective no sooner than 60 days from the date of the court's order so that bar members might be more informed regarding these revisions.

## IX

13. Since advance notice of this filing and publication of the actual amendments contained herein, the bar has received no commentary regarding any of these proposals.

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

**X**

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

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

Respectfully submitted,

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

Alan B. Bookman  
President 2005-06  
Florida Bar Number 154770

Henry M. Coxe, III  
President-elect 2006-07  
Florida Bar Number 155193

Robert M. Brush  
Chair, Rules Committee 2005-06  
Florida Bar Member Number 349992

Clifton A. McClelland, Jr.  
Chair, Rules Committee 2004-05  
Florida Bar Number 119792

Paul F. Hill  
General Counsel  
Florida Bar Number 137430

The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
850 / 561-5600

April 26, 2006

**CERTIFICATE OF TYPE SIZE AND STYLE**

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail on this 26th day of April, 2006, to:

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