

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE:
PETITION TO AMEND THE RULES
REGULATING THE FLORIDA BAR
BIANNUAL FILING 2012

CASE NO.

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR BIANNUAL FILING 2012

The Florida Bar (the bar), pursuant to R. Regulating Fla. Bar 1-12.1, petitions this court for an order amending the Rules Regulating The Florida Bar and states:

I. Authority to File Petition

1. This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors).
2. Because the number of rules amendments is small, this petition is not bifurcated as in case number SC10-1967.
3. This petition includes proposed new rules or amendments to existing rules that were approved by the Board of Governors between July 2010 and July 2012 with the exception of amendments currently pending before this Court, which are discussed in §VI, and with the exception of the minor edits noted in §V.

II. Organization of Amendments

4. The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. Section III below provides information regarding development of these rules proposals as required by Part III of this Court's administrative order number AOSC 06-14 of June 14, 2006 in *In Re: Guidelines for Rules Submissions*. Each entry provides the following information: an explanation of each amendment; the reasons for each recommended 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 Board of Governors; and dissenting views within the Board of Governors, if any, regarding each submission.

5. Some rules were the subject of multiple proposed revisions that were considered at different times. When that occurred, those amendments are reported as separate items to better reflect the distinctive aspects of their development.

CHAPTER 1 GENERAL SUBCHAPTER 1-3 MEMBERSHIP

Rule 1-3.7 Reinstatement to Membership

Explanation: Within subdivision (g)(2), clarifies that any lawyer who has not actively practiced or been in a position requiring a law license for the entire period of inactive membership must complete the basic skills course and 30 hours of continuing legal education to become eligible. Terminology changed from "attorney" to "lawyer" throughout to conform to the Supreme Court of Florida style guide.

Reasons: The amendment seeks to ensure that a lawyer who has been inactive for 5 years or more without practicing law in any jurisdiction is current in continuing legal education and that reinstated members will be competent to practice law when they become members in good standing and eligible to practice again.

Source: Certification Staff.

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review of Alternative 2 by ballot vote of 7-0 on January 3, 2011;
- Budget Committee favorably reported fiscal review by email vote of 9-0 on January 6, 2011;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 27, 2011;
- On January 28, 2011 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent on March 25, 2011.

SUBCHAPTER 1-7 MEMBERSHIP FEES AND FISCAL CONTROL

Rule 1-7.3 Membership Fees

Explanation: Within subdivisions (c) and (e), adds language to allow the bar to notify bar members of their late fees via electronic mail; requires an electronic return receipt. Also within subdivision (c), adds "undue hardship" as a reason to allow members to pay membership fees in installments. Other amendments are made to conform to the Supreme Court style guide, but do not change the substance of the rule; deferred by Budget Committee at December board meeting;

Budget Committee favorably reported substantive and fiscal review by unanimous vote on January 26, 2012.

Reasons: The amendment would reduce costs by adding options for delivery of late fee notifications by electronic mail rather than by U.S. mail.

Source: Budget Committee

Background Information – Member Commentary / Committee Action:

- Budget Committee favorably reported substantive and fiscal review by unanimous vote on January 26, 2012;
- Rules Committee favorably reported procedural review by vote of 5-0 by email vote on February 21, 2012;
- Budget Committee amended to strike the addition of part of subdivision (c)(3) that allows election of undue hardship three times in a one-year period;
- Budget Committee favorably reported the amended version;
- Program Evaluation Committee favorably reported strategic plan review by voice vote on March 22, 2012.

Board Action: Board of Governors favorably reported the rule amendments with the budget committee changes by voice vote on March 23, 2012.

CHAPTER 2 BYLAWS OF THE FLORIDA BAR SUBCHAPTER 2-7 SECTIONS AND DIVISIONS

Rule 2-7.3 Creation of Sections and Divisions

Explanation: Adds new Alternative Dispute Resolution Section to the list of approved sections; renumbers accordingly.

Reasons: The Alternative Dispute Resolution Section was created in 2010 and approved by the board of governors on July 23, 2010. New Alternative Dispute Resolution Section was suggested by bar members and developed by board members. Creation of the section was discussed with the Dispute Resolution Center and OSCA.

Source: Bar Staff.

Background Information – Member Commentary / Committee Action:

- Program Evaluation Committee favorably reported substantive and strategic plan review on October 20, 2011;
- Rules Committee favorably reported procedural review by vote of 3-0 on November 9, 2011;
- Budget Committee favorably reported fiscal review by email vote on November 23, 2011;
- On December 9, 2011 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

CHAPTER 3 RULES OF DISCIPLINE
SUBCHAPTER 3-4 STANDARDS OF CONDUCT

Rule 3-4.1 Notice and Knowledge of Rules; Jurisdiction Over Attorneys of Other States and Foreign Countries

Explanation: The proposed amendment would require the bar to notify European Union countries of Florida discipline of attorneys licensed in their jurisdiction(s), where such information regarding foreign licensing is made known to bar staff before or at the time of such discipline.

Reasons: The amendment was requested by this Court as part of a resolution from the Conference of Chief Justices of the U.S. in order to provide greater cooperation between the bars of the various states of the United States and the countries of the European Union as there is more cross-border practice by attorneys now and more is expected in the future. See letter dated January 26, 2012, Appendix D, page 1.

Source: Disciplinary Procedures Committee chair at the request of Chief Justice Canady

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported substantive review by vote of 6-0 on March 22, 2012;
- Budget Committee favorably reported fiscal review by email vote of 7-0 on April 26, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on May 24, 2012;
- On May 25, 2012 board meeting agenda for first reading;
- Rules Committee favorably reported procedural review by vote of 7-0 (6 in-person and 1 email) on July 26, 2012.

Board Action: Board of Governors approved on consent on July 27, 2012.

SUBCHAPTER 3-6 EMPLOYMENT OF CERTAIN ATTORNEYS OR FORMER ATTORNEYS

Rule 3-6.1 Employment of Certain Attorneys or Former Attorneys

Explanation: Adds new subdivision (d)(4) to prohibit suspended attorneys and former attorneys who have been disbarred, or whose disciplinary resignations or revocations have been allowed, from representing clients in administrative proceedings and before administrative agencies which allow nonlawyer agents or “qualified representatives” to represent clients in certain circumstances.

Reasons: A disbarred or suspended lawyer, or a lawyer whose license has been revoked or who has submitted a disciplinary resignation, has been adjudged by this Court to be unfit to represent clients as a lawyer. In order to protect the public and the integrity of the judicial system, such a person should also be deemed unfit to represent clients in a “nonlawyer” capacity before a decision-making entity where the individual will be essentially performing the role of a lawyer, acting on behalf of members of the public and representing their interests as would a lawyer, only without the title of lawyer.

This Court has had occasion over the years to clarify the extent of its jurisdiction over disbarred attorneys and attorneys who have submitted a disciplinary resignation. This Court held in *The Florida Bar v. Ross*, 732 So.2d 1037, 1041 (Fla. 1999) that suspended attorneys, disbarred attorneys and attorneys who have resigned in the face of disciplinary charges “are all subject to the continuing jurisdiction of this Court by virtue of the respective orders under which they were disciplined.” As further discussed in *The Florida Bar v. Hale*, 762 So.2d 515, 517 (Fla. (2000), such continuing jurisdiction may be based on the court’s authority to prohibit the unlicensed practice of law or it may arise from the court’s power to enforce the terms of the order granting disciplinary resignation or disbarment and requirements governing readmission. *See also, The Florida Bar v. Elliott*, 3 So.3d 317 (Fla. 2009). Thus, restricting activities of disbarred and suspended attorneys and attorneys who have resigned due to disciplinary charges under Rule 3-6.1 is fully supported by Article V and case law interpreting it.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported by voice vote of 5-2 on May 27, 2010. Reviewed with rule 3-5.1;
- Budget Committee favorably reported by voice vote of 9-0 on February 28, 2011;
- Rules Committee discussed during a conference call on February 24, 2011; a motion was made, but not seconded, to approve procedurally but express concerns on a substantive basis. A motion was made to not approve procedurally based upon a lack of jurisdiction. The motion was seconded but since a quorum wasn't reached the proposed amendment was resubmitted to the committee via email/fax ballot with 3 options. A - Approve Procedurally with Substantive Concerns. B - Disapprove Procedurally - No Jurisdiction. C - Approve Procedurally with No Further Comment. There were 6 ballots received on March 2, 2011; 2 for Option A, 2 for Option B, and 2 for Option C. Therefore, the proposed amendment was returned to the Rules Committee.

- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on March 24, 2011;
- Rules Committee favorably reported procedural review by ballot vote of 4-0 on April 26, 2011.

Board Action: Board of Governors favorably reported by voice vote on May 27, 2011.

SUBCHAPTER 3-7 PROCEDURES

Rule 3-7.1 Procedures; Confidentiality

Explanation: Adds new subdivision (1)(3) to authorize release of confidential information during pending investigations upon receipt of a signed waiver by respondents who are applying for board certification to the Board of Legal Specialization and its committees; renumbers subdivision (1)(3) to (1)(4).

Reasons: BLSE investigates the ethics and professionalism of all attorneys, including their past and pending discipline, before granting them board certification. The proposed amendment would clear up any existing uncertainty as to whether a signed waiver of respondent is sufficient to allow release of information by lawyer regulation regarding pending investigations to bar staff of the BLSE.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported by voice vote of 6-0 on January 27, 2011;
- Budget Committee favorably reported by voice vote of 9-0 on February 28, 2011;
- Rules Committee favorably reported by voice vote of 3-0 on February 24 conference call but since a quorum wasn't reached the proposed amendment was resubmitted to the committee via email/fax ballot;
- Rules Committee favorably reported procedural review via fax/email ballot of 6-0 on March 2, 2011; will be on March 25, 2011 board meeting agenda for first reading;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on March 24, 2011.

Board Action: Board of Governors favorably reported on consent on May 27, 2011.

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

Explanation: Within subdivision (f), allows the bar and the respondent to file an immediate consent judgment for disbarment or for disciplinary revocation if the respondent wishes to resolve the matter immediately following a judgment of guilt in a felony case.

Reasons: The current rule requires the bar to file a notice of felony conviction with this Court once the bar becomes aware that a member of the bar has been so adjudicated. Once this Court suspends the lawyer pursuant to that notice, this Court automatically causes a referee to be appointed, and subsequent hearings are required. The proposed amendment saves time and resources of the respondent, the bar, and the court system by obviating the need for a referee proceeding where the respondent wishes to agree to disbarment or disciplinary revocation immediately after a judgment of guilt in a felony case.

Source: Bar Staff and Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported on November 10, 2011 by voice vote of 6-0;
- Budget Committee favorably reported fiscal review by unanimous vote on January 26, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 10-0 on January 26, 2012;
- On January 27, 2012 board meeting agenda for first reading.
- Rules Committee favorably reported procedural review by vote of 4-0 on February 21, 2012.

Board Action: Board of Governors favorably reported by voice vote on March 23, 2012.

Rule 3-7.10 Reinstatement and Readmission Procedures

Explanation: Within subdivision (f)(3), proposed amendments clarify that ordinary life activities do not constitute rehabilitation. Within subdivision (f)(3)(G), proposed amendments define community and civic service. Proposed commentary provides discussion and case law discussing community and civic service required for reinstatement.

Reasons: This Court has issued a number of opinions relating to the issue of community service and has recently specifically stated that certain activities such as caring for one's elderly parents or one's own children do not qualify as community service. The proposed amendments codify this case law, define community and civic service, and give notice to Florida Bar members of the

specific forms of community and civic service this Court expects in order to establish rehabilitation for reinstatement or readmission. The activities must be directed to the community at large and not limited to a petitioner's own family or an entity such as a respondent's alma mater.

Yourdictionary.com defines community service as “unpaid work which benefits the community.” Examples of civic service provided by Washington University’s Center of Social Development are building houses for Habitat for Humanity, serving on an association board and voting. A more specific definition of civic service is provided by Washington University. “Civic service is a particular type of civic engagement, defined as formal volunteering in a structural program. The Peace Corps and AmeriCorps are two well-known examples of civic service programs.”

Other schools such as Princeton University offer internships in civic service. These internships are designed to meet the Princeton tradition of “in the Nation’s service and in the service of all Nations.” The internships include work in village development, community housing centers, city and state public medical programs, programs in food and health care for the homeless, free legal services, assistance to public libraries, poverty and race research, public health research, etc.

While some civic activities may be paid positions or at least include a stipend, such as the director of a program to provide fair public housing or a Peace Corps employee, this Court’s decisions appear to envision that all civic or community service to be considered in reinstatement petitions should be unpaid voluntary service for the betterment of the community at large and not just benefiting the interests of the individual.

The following cases were considered by the bar in proposing these amendments:

The Florida Bar v. Medina, Case Nos. SC09-164 and SC09-644: The bar and respondent had agreed to settle 2 pending proceedings for a 90 day suspension, followed by a 3 year probation, with additional conditions including 50 hours of community service by respondent during the suspension and another 50 hours of community service during each of the 3 years of probation.

The referee approved the settlement, but this Court responded with an order to show cause as to why it had authority to order the community service and speaking engagements. This Court ultimately entered an order modifying the terms of the settlement to limit the organizations for which respondent could perform community service to only two. The original settlement had included 5 charities, one being a local Little League and the other respondent’s alma mater. The only two charities approved by the Court were Metropolitan Ministries and the Pediatric Cancer Foundation. This Court stated that the respondent should not

receive credit for doing things that he would be doing even in the absence of the court order.

The Florida Bar v. Bevan, 993 So.2d 514 (Fla. 2008), Case No. SC07-679: Respondent petitioned for reinstatement and the referee issued a report recommending his reinstatement. The bar appealed and this Court agreed with the bar, denying reinstatement. Respondent had taken no action during his suspension to maintain or enhance his ability to practice law, had engaged in insufficient community service and had violated a court order in a federal case during his suspension.

Respondent's petition for reinstatement referred to only one instance of community service--his volunteer work for his church, St. Edward's, helping to feed the poor by donating both time and money to make sandwiches for distribution to the poor. Respondent was unable to show employment in the legal field or efforts to keep up with his profession during his suspension. The only employment referred to during respondent's suspension was his community service work for his church and its food pantry.

This Court, in its 2008 order denying reinstatement for respondent, held that there was "insufficient evidence of rehabilitation" by respondent and the referee's finding that respondent did not violate a federal court order was clearly erroneous. The opinion further stated, referring to Rule 3-7.10(f)(2)(H) and (f)(3)(G): "Particularly, the Court finds that Bevan's showing of positive action is insufficient as *he has not meaningfully engaged in community or civic service.*" [Emphasis added].

The Florida Bar v. Baraque, 43 So.3d 691 (Fla. 2010), Case No. SC08-2411: Respondent showed rehabilitation, had paid costs of his disciplinary proceeding, had favorable character witnesses, and had worked outside the home in non-legal jobs for a time. After 2008 he was unable to find work so he stayed home and took care of his small child and his elderly parents. He presented no evidence of community service to any person or group outside his own family. He had engaged in at least one instance of misconduct, assisting his brother with legal advice and assistance during his suspension.

The referee recommended reinstatement, stating her belief that respondent's care of his elderly parents was community service in that they would have had to seek assistance with the activities of daily living from community resources if their son had not helped them. While this Court did not specifically mention lack of community service in its short order, the Court disapproved the referee's report and denied the petition for reinstatement.

Florida Board of Bar Examiners v. M.L.B., 766 So.2d 994 (Fla. 2000): *In reject a petition for admission to The Florida Bar, this Court stated:*

[W]hile activities which benefit the applicant as well as the community are not necessarily unacceptable for purposes of rehabilitation, [citation omitted] such activities are certainly not the type of broad-based community or charitable activities which this Court views as strong evidence of positive action showing rehabilitation. The rules contemplate [footnote omitted] and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission, and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens.

Source: Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee favorably reported with minor revisions by voice vote of 5-1 on January 27, 2011;
- Budget Committee favorably reported by voice vote of 9-0 on February 28, 2011;
- Rules Committee discussed on conference call on February 24, 2011 conference call and asked that the words "living as and" be removed from the language in subdivision (f)(3). Since this language is pending at the Court, the correction will be made after an opinion is issued. Rules Committee favorably reported by voice vote of 3-0 on the February 24 conference call but since a quorum wasn't reached the proposed amendment was resubmitted to the committee via email/fax ballot;
- Rules Committee favorably reported procedural review via fax/email ballot of 6-0 on March 2, 2011;
- On March 25, 2011 board meeting agenda for first reading;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on March 24, 2011.

Board Action: Board of Governors favorably reported on consent on May 27, 2011.

CHAPTER 4 RULES OF PROFESSIONAL CONDUCT SUBCHAPTER 4-1 CLIENT-LAWYER RELATIONSHIP

Rule 4-1.6 Confidentiality of Information

Explanation: Within subdivision (c)(5), changes "Rules of Professional Conduct" to "Rules Regulating The Florida Bar."

Reasons: The change acknowledges that there are other provisions of the Rules Regulating The Florida Bar, notably requirements in the trust accounting

rules, that may require disclosure of confidential information. The proposed change would permit a lawyer to comply with obligations under Rules Regulating The Florida Bar other than chapter 4, Rules of Professional Conduct, in disclosing otherwise confidential information.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported fiscal review by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

Rule 4-1.7 Conflict of Interest; Current Clients

Explanation: This is the first of two separate amendments. Adds the title "informed consent" to subdivision (b) to conform with the style guide.

Within subdivision (d), changes "upon consent by the client after consultation regarding the relationship" to "with the client's informed consent, confirmed in writing or clearly stated on the record at a hearing."

Within the first paragraph of the comment under "Conflict in Litigation," adds "(b) and" before "subdivision (c)."

Reasons: The proposed amendment makes subdivision (d) consistent with other provisions of rule 4-1.7, so that when a present client is asked to consent to a conflict, the consent must either be confirmed in writing or on the record at a hearing, and the terminology "informed consent" is consistent throughout the rules.

The proposed amendment to add subdivision (b) in the comment would clarify that representation of multiple clients in litigation must include compliance with subdivision (b) as well as subdivision (c).

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;

- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

Rule 4-1.7 Conflict of Interest; Current Clients

Explanation: This is the second of two separate amendments. Within subdivision (d), clarifies that family relationship is by blood or marriage.

Reasons: The amendment clarifies that the relationship creating the conflict may be by blood or marriage.

Source: Bar Staff at request of Board of Governors member

Background Information – Member Commentary / Committee Action:

- Referred to the Rules Committee by Board of Governors member Clif McClelland;
- After clarifying the amended language, the Rules Committee favorably reported substantive and procedural review by a vote of 5-0 on April 17, 2012;
- Budget Committee favorably reported by email vote of 7-0 on April 26, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on May 24, 2012;
- On May 25, 2012 board meeting agenda for first reading.

Board Action: Board of Governors favorably reported by voice vote on July 27, 2012.

Rule 4-1.9 Conflict of Interest; Former Client

Explanation: Within the 4th paragraph of the comment, deletes the sentence, "For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce."

Reasons: The sentence that is proposed to be removed was adopted from the ABA Model Rules. The proposed amendment recognizes that Florida's Family Law Rules require extensive financial disclosure of parties, such that having financial information about the opposing party in a divorce should generally not be disqualifying, in that it is information the lawyer will obtain through normal discovery. It would be only in rare instances that the lawyer's financial information about a party in a dissolution matter would disqualify the lawyer, as it is information any lawyer will obtain in the dissolution matter as a matter of course.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

Rule 4-1.10 Imputation of Conflicts of Interest; General Rule

Explanation: Within the third paragraph under "Confidentiality" in the comment to the rule, adds the word "relevant" before "protected by rules 4-1.6 and 4-1.9(b)."

Reasons: The amendment clarifies that the disqualifying conflict exists only when the lawyer has relevant confidential information, because if the only confidential information the lawyer has is not relevant to the pending matter, the lawyer has no need to use the information, has no unfair advantage because of the confidential information, and does not have a disqualifying conflict.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

SUBCHAPTER 4-2 COUNSELOR

Rule 4-2.4 Lawyer Serving as Third-Party Neutral

Explanation: Within the second paragraph of the comment, changes "Society of Professionals in Dispute Resolution" to "Association for Conflict Resolution."

Reasons: According to the Association for Conflict Resolution, the Society of Professionals in Dispute Resolution has merged with 2 other organizations and formed the Association for Conflict Resolution.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

SUBCHAPTER 4-3 ADVOCATE

Rule 4-3.4 Fairness to Opposing Party and Counsel

Explanation: Within subdivision (b), provides that a lawyer may pay a witness a reasonable amount to compensate for the witness' time in preparing for, attending, or testifying at proceedings.

Reasons: This proposed amendment arises out of a Florida Bar advisory staff opinion on an ethics issue. At the December 11, 2009 Board of Governors meeting, the Board Review Committee on Professional Ethics (BRC) chair reported that the BRC voted 6-0 to recommend that the Board of Governors affirm Florida Bar Staff Opinion 28884 as written. The staff opinion concluded that the inquirer should not compensate a witness who is retired and not otherwise employed for time spent preparing for deposition and testimony because Rule 4-3.4(b) permits only “reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings.” The BRC also voted to refer the issue to the appropriate committee to consider an amendment to Rule 4-3.4(b) to adopt the ABA Model Rule which permits payments to witnesses as permitted by law. The Board of Governors voted to approve the BRC recommendation.

Of the states that have issued ethics opinions on this issue, most states have taken the position that a lawyer may pay a witness for his or her time as long as the fee is permissible under law, is based on the reasonable value of the witness' time, and the witness is not being paid for the content of their testimony. Some states take the position that a witness cannot be paid for anything more than actual out-of-pocket expenses. Most states that permit compensation to witnesses have either adopted the ABA Model Rule based on payments “permitted by law” or are under the old disciplinary rule that permits “reasonable compensation” to a witness.

Florida's Rule 4-3.4(b) does not contain the same language as either the ABA Model Rule or the disciplinary rule that some states have adopted. In 1994,

the Supreme Court of Florida amended Florida's rule, which was substantially the same as the ABA Model Rule at that time regarding payments "prohibited by law" to replace the phrase "prohibited by law" with an exception to allow payment to a witness of "reasonable compensation to a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings." The Florida Bar Re Amendments to Rules Regulating The Florida Bar, 644 So.2d 282 (Fla. 1994).

The Board Review Committee on Professional Ethics, in reviewing the request for an advisory ethics opinion, determined that the rule does not currently permit reasonable payments to witnesses except for "loss of compensation," which would prohibit payments to witnesses who are retired or who do not work outside the home. As a policy matter, the Board Review Committee on Professional Ethics determined that the rule should permit reasonable payments to witnesses for their time, regardless of whether the witness actually lost compensation from current employment.

Source: Board Review Committee

Background Information – Member Commentary / Committee Action:

- Approved by Board Review Committee by 7-0 on voice vote on May 27, 2010;
- Rules Committee favorably reported substantive and procedural review by voice vote of 3-0 and ballot vote of 1-0 on July 1, 2010;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on July 22, 2010;
- On first reading at July 23, 2010 Board of Governors meeting;
- Budget Committee favorably reported fiscal review by ballot vote of 9-0 on August 31, 2010.

Board Action: Board of Governors favorably reported by voice vote on October 1, 2010.

SUBCHAPTER 4-4 TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4-4.2 Communication With Person Represented by Counsel

Explanation: Within subdivision (a), changes "adverse party" to "person."

Reasons: The proposed amendment is in recognition that not every represented person on whom notice must be served is a party.

Source:

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;

- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012.

SUBCHAPTER 4-6 PUBLIC SERVICE

Rule 4-6.5 Voluntary Pro Bono Plan (membership)

Explanation: This is the first of 2 proposed amendments to this rule. Within subdivision (b), expands the number of committee members on the Standing Committee on Pro Bono Legal Service from 20 specifically designated members to 21 specifically required members plus 4 nonspecific, at-large members for a total of no more than 25 members. Expands eligible board member appointees from current to past or current board members. Adds YLD president or designee to the list of required members. Within subdivision (c)(2)(D) and (E), deleted extraneous language and reworded for clarity and consistency. Within subdivision (d), reworded for clarity and consistency.

Reasons: The amendments expand the options for selecting committee members and allow more flexibility and consideration for busy schedules of current board members. Often current board members appointed to the Standing Committee on Pro Bono Legal Services are so busy with their board responsibilities, travel, and meetings that they are not able to effectively participate or contribute to the committee. Modifying the requirements from current board members to include past or current board members should allow for better participation from this category. The expansion to past or current board members is consistent with the current directors of The Florida Bar Foundation. Including the president or designee of the Young Lawyers Division is an important addition because of the pro bono collaborative efforts of the committee and YLD.

Source: Kent Spuhler and Sheila Meehan proposed changes to the bar in 2008. See September 24, 2010 minutes of Pro Bono Legal Service Committee, Appendix D, page 50.

Background Information – Member Commentary / Committee Action:

- Rules Subcommittee of the Pro Bono Legal Service Committee reviewed and developed the recommended changes;
- The Standing Committee on Pro Bono Legal Service unanimously approved these changes during the September 24, 2010 committee meeting;

- Rules Committee favorably reported substantive and procedural review by ballot vote of 7-0 on January 3, 2011;
- Budget Committee favorably reported fiscal review by email vote of 9-0 on January 6, 2011;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 6-0 on January 27, 2011;
- On January 28, 2011 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent on March 25, 2011.

Rule 4-6.5 Voluntary Pro Bono Plan (responsibilities)

Explanation: This is the second of 2 proposed amendments to this rule. Within subdivision (b)(2), adds new subdivision (A) to include "identify, encourage, support, and assist statewide and local pro bono projects and activities" to the responsibilities of the standing committee; reletters accordingly.

Reasons: Amendments more accurately reflect the purpose and work of the Standing Committee in supporting pro bono efforts at the state and local level. It expands upon the administrative role originally set forth under the rules and states more clearly the active nature of the committee in driving pro bono efforts in Florida. The language change solidifies the long term role of the Standing Committee and its membership as an active proponent of pro bono for years to come despite changes in leadership.

Source: Pro Bono Legal Services Committee

Background Information – Member Commentary / Committee Action:

- Pro Bono Legal Services Committee favorably reported by unanimous vote on June 22, 2011;
- Rules Committee favorably reported substantive and procedural review by voice vote of 4-0 on July 28, 2011;
- Budget Committee favorably reported fiscal review of 7-0 on September 30, 2011;
- Program Evaluation Committee favorably reported strategic plan review on October 20, 2011;
- On October 21, 2011 board agenda for first reading.

Board Action: Board of Governors favorably reported by voice vote on December 9, 2011.

SUBCHAPTER 4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 4-8.6 Authorized Business Entities

Explanation: Within subdivision (c), clarifies that a nonlawyer may not serve as an officer with policy making function, regardless of whether the nonlawyer is engaged in the practice of law.

Reasons: The amendment rectifies an error that was made in a prior rule change. *Amendments to Rules Regulating The Florida Bar, 677 So.2d 272* (Fla. 1996). The historical information relating to the prior rule change indicates that the changes to the rule then were to expand the types of business entities that lawyers could practice in to include all those that are permissible under Florida law. However, in changing the rule, an amendment was made that arguably would permit nonlawyers to serve as an officer in the law firm if the nonlawyer was not engaged in the practice of law, which does not appear to be the intent of the amendment. The proposed amendment would rectify that error and return to the prior status of the rule, that would clearly indicate that no nonlawyer may serve as an officer of a law firm with policy-making function. The amendment would also make 4-8.6 consistent with rule 4-5.4(e), which states:

(e) Nonlawyer Ownership of Authorized Business Entity. A lawyer shall not practice with or in the form of a business entity authorized to practice law for a profit if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Source: Bar Staff

Background Information – Member Commentary / Committee Action:

- Rules Committee favorably reported substantive and procedural review by vote of 4-0 on February 21, 2012;
- Budget Committee favorably reported by email vote of 5-0 on March 1, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 8-0 on March 22, 2012;
- On March 23, 2012 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent calendar on May 18, 2012

CHAPTER 5 RULES REGULATING TRUST ACCOUNTS
SUBCHAPTER 5-1 GENERALLY

Rule 5-1.2 Trust Accounting Records and Procedures

Explanation: Within subdivision (b), adds new subdivision (5) which sets forth records requirements for wire transfers. Adds a new subdivision (c) to delineate each lawyer's responsibility within a firm relating to the trust account and requires the firm to have a plan distributed among firm attorneys describing which lawyers handle trust account responsibilities. Reletters subdivisions accordingly. Within new subdivision (d), clarifies that if the lawyer fails to file the trust accounting certificate, the lawyer will be deemed a delinquent member and ineligible to practice law.

Reasons: The proposed rule changes setting forth records requirements for wire transfers respond to technological changes in the banking industry which affect lawyer trust accounts. Additional proposed amendments seek to delineate responsibility for trust account functions within each law firm. The amendments require each law firm to have a written plan that delineates the responsibility of lawyers in the firm relating to the trust account, including which lawyers are responsible for specific compliance with trust accounting rules: the names of signatories, the lawyer(s) responsible for balancing the trust account(s), and the lawyer(s) responsible for answering questions relating to the trust account. The amendments require that each lawyer maintain individual responsibility for his or her own actions as relates to trust funds, and that each lawyer who has knowledge of violations of trust account rules take appropriate action, including reporting serious violations to the bar. The amendments also clarify that the individual lawyer is responsible only for his or her own actions, unless the lawyer is the lawyer designated to handle trust accounting responsibilities for the firm. The amendments require that each lawyer in the firm be given a copy of the written plan and that the written plan be updated if there are any material changes, so that each lawyer in the firm is aware of responsibility relating to trust accounting.

Source: Bar Staff and Disciplinary Procedure Committee

Background Information – Member Commentary / Committee Action:

- Disciplinary Procedure Committee discussed on October 22 and December 9, 20120;
- Trust accounting forms appendix approved 6-0 at 5/26/11 Disciplinary Procedure Committee meeting;
- Disciplinary Procedure Committee considered proposed rule changes July 28, 2011; final approval by Disciplinary Procedure Committee of proposed amendments with additional changes by unanimous vote of 5-0 at November 10, 2011 meeting and approval of Appendix B, trust account plan forms, with changes by unanimous vote of 5-0;

- Budget Committee favorably reported fiscal review by unanimous vote on January 26, 2012;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 10-0 on January 26, 2012;
- On January 27, 2012 board meeting agenda for first reading;
- Rules Committee favorably reported procedural review by vote of 4-0 on February 21, 2012.

Board Action: Board of Governors favorably reported by voice vote on March 23, 2012.

CHAPTER 10 RULES GOVERNING THE INVESTIGATION AND PROSECUTION OF UNLICENSED PRACTICE OF LAW
SUBCHAPTER 10-3 STANDING COMMITTEE

Rule 10-3.1 Generally

Explanation: Within subdivision (a) reduces the number of Standing Committee on the Unlicensed practice of Law members from 37 to 25 and the number of nonlawyers from 18 to 12 maintaining the current ratio of lawyers to public members. Some language throughout the proposal is rearranged or edited to conform to the style guide or plain language guidelines.

Reasons: The reduction of committee size would accurately reflect the number of members who actually attend the meetings.

Source: Bar staff and the Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by vote of 13-8 on September 23, 2011;
- Rules Committee favorably reported substantive and procedural review by vote of 3-0 on November 9, 2011;
- Budget Committee favorably reported fiscal review by email vote on November 23, 2011;
- On December 9, 2011 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

SUBCHAPTER 10-7 PROCEEDINGS BEFORE A REFEREE

Rule 10-7.2 Proceedings For Indirect Criminal Contempt

Explanation: Within subdivision (c)(3), clarifies that in a proceeding for indirect criminal contempt the date and time of the hearing to determine guilt or innocence will be set at the arraignment and the respondent will enter a plea.

Reasons: Amendments clarify the procedure to be used in proceedings for indirect criminal contempt. Currently, it is not clear whether the trial will take place at the first hearing or whether the first hearing is for arraignment. This causes counsel to be ready for trial even though the referee may not hold trial. Amendment clarifies that the trial will not be held at the arraignment.

Source: Bar staff and the Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported by a vote of 27-0 on June 24, 2010. Rules Committee favorably reported by voice vote of 3-0 and ballot vote of 3-0 on November 4, 2010;
- Chair Gregoire asked UPL Counsel to add language to clarify that there are actually two hearings being held. The language was added and resubmitted to the Rules Committee on November 5, 2010;
- Rules Committee favorably reported the additional language by voice vote of 3-0 on November 4, 2010 (Gregoire, Echsner, Upchurch) and ballot vote of 3-0 (Suskauer, Young, Hickey) on November 5, 2010;
- Budget Committee favorably reported by ballot vote of 9-0 on November 19, 2010;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 10-0 on December 9, 2010;
- On December 10, 2010 board meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent on January 28, 2011.

CHAPTER 12

Chapter 12 - Emeritus Attorneys' Pro Bono Participation Program

Explanation: Amendments are proposed to 3 rules (noted below) would allow an out-of-state attorney who is certified by the Supreme Court of Florida as an Authorized House Counsel to participate in the Emeritus Attorneys' Pro Bono Participation Program to provide pro bono legal services in Florida. Companion changes are proposed in chapter 17 as noted in that section below.

Regarding amendments to rule 12-1.2, within subdivision (a), allows an Authorized House Counsel to be certified as an Emeritus Attorney to provide pro bono legal services.

Regarding amendments to rule 12-1.5, adds new subdivision (a)(3) to allow an exemption for an Authorized House Counsel applying for Emeritus Attorney status from having to supply a certificate of good standing.

Rule 12-1.6, adds new subdivision (a)(3) to provide that if an individual's Authorized House Counsel status is revoked, their Emeritus Attorney status should also be revoked.

Additional amendments for these 3 rules as well as the rest of chapter 12 are proposed for clarity and to conform to the Supreme Court Style Guidelines.

Reasons: Amendments to rule 12-1.2 would allow Authorized House Counsel to provide pro bono services to increase the pool of pro bono attorneys in Florida. An Authorized House Counsel is a lawyer licensed in a state other than Florida who is exclusively employed by a business organization located in Florida and has been certified as an Authorized House Counsel by the Supreme Court of Florida. The request to amend the rules to allow Authorized House Counsel to provide pro bono legal services in Florida was made by several Authorized House Counsel.

Regarding proposed amendments to rule 12-1.5, an Authorized House Counsel must provide the certificate of good standing at the time of application for Authorized House Counsel status so it is not necessary when applying for Emeritus Attorney status.

Regarding proposed amendments to rule 12-1.6, as Authorized House Counsel status is a basis for eligibility to be certified as an Emeritus Attorney, if the Authorized House Counsel status is revoked, the Emeritus Attorney status is also revoked.

Source: Standing Committee on the Unlicensed Practice of Law and the Pro Bono Legal Services Committee

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported and referred to the Pro Bono Legal Services Committee by unanimous vote on September 9, 2009;
- Pro Bono Legal Services Committee favorably reported by vote on June 22, 2011;
- Rules Committee favorably reported substantive and procedural review by voice vote of 4-0 on July 28, 2011;
- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on September 30, 2011;
- Program Evaluation Committee favorably reported strategic plan review on October 20, 2011 also reviewed on a substantive basis;
- On first reading at October 21, 2011 board meeting; sent to Program Evaluation Committee for substantive review;
- Program Evaluation Committee favorably reported substantive review on December 8, 2011.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

CHAPTER 14 GRIEVANCE MEDIATION AND FEE ARBITRATION SUBCHAPTER 14-ESTABLISHMENT

Rule 14-1.2 Jurisdiction

Explanation: Within subdivision (a), deletes the cap on attorneys' fees as a requirement for jurisdiction; renumbers accordingly.

Reasons: The Program Evaluation Committee determined the \$100,000 cap was arbitrary and did not correlate with an overly complex matter or a matter which would require more than 8 hours to resolve. An arbitration was conducted in early 2011 where the amount in controversy was substantially higher than \$100,000, yet the proceedings were concluded in a timely manner. The program maintains the right to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

No fiscal impact is predicted because the program does not charge for services or produce revenue.

Source: Subcommittee on Fee Arbitration / ACAP and Program Evaluation Committee

Background Information – Member Commentary / Committee Action:

- On May 26, 2011, the Program Evaluation Committee unanimously approved the recommendation of the Subcommittee on Fee Arbitration to reverse their previous decision on attorney fee caps. These amendments were effective July 1, 2012 and part of (SC10-1967);
- Rules Committee favorably reported procedural review by vote of 3-0 on November 9, 2011;
- On December 9, 2011 board meeting agenda for first reading;
- Budget Committee favorably reported fiscal review by email vote on November 23, 2011.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

CHAPTER 17 AUTHORIZED HOUSE COUNSEL RULE SUBCHAPTER 17-1 GENERALLY

Rule 17-1.3 Activities

Explanation: Adds new subdivision (a)(3) to allow an Authorized House Counsel to provide pro bono legal services if certified under Chapter 12, the Emeritus Attorney rule.

Reasons: Authorized House Counsel are currently not allowed to provide pro bono services. The amendment would allow this and increase the pool of pro bono attorneys in Florida. Companion changes are proposed in chapter 12 as noted above.

Source: Standing Committee on the Unlicensed Practice of Law

Background Information – Member Commentary / Committee Action:

- Standing Committee on Unlicensed Practice of Law favorably reported and referred to the Pro Bono Legal Services Committee by unanimous vote on September 9, 2009.
- Pro Bono Legal Services Committee favorably reported by vote on June 22, 2011;
- Rules Committee favorably reported substantive and procedural review by voice vote of 4-0 on July 28, 2011;
- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on September 30, 2011;
- Program Evaluation Committee favorably reported strategic plan review on October 20, 2011;
- On first reading at October 21, 2011 board meeting.

Board Action: Board of Governors favorably reported by voice vote on December 9, 2011.

CHAPTER 20 FLORIDA REGISTERED PARALEGAL PROGRAM SUBCHAPTER 20-2 DEFINITIONS

Rule 20-2.1 Generally

Explanation: Within subdivision (c), clarifies the number of years needed to meet the definition of recent paralegal work; also deletes the words "set forth herein" to conform to Supreme Court style guide.

Reasons: The current language created confusion.

Source: Florida Registered Paralegal Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by vote of 5-0 on September 22, 2011;
- Rules Committee favorably reported substantive and procedural review by vote of 3-0 on November 9, 2011;
- Program Evaluation Committee favorably reported strategic plan review on December 8, 2011;
- On December 9, 2011 board meeting agenda for first reading;
- Budget Committee favorably reported fiscal review by email vote on November 23, 2011.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

SUBCHAPTER 20-3 ELIGIBILITY REQUIREMENTS

Rule 20-3.1 Requirements for Registration

Explanation: This is the first of two revisions to this rule. Allows an Florida Registered Paralegal who was initially registered under the grandfathering provision to reregister under the grandfathering provision.

Reasons: The grandfathering provision of eligibility sunset on March 1, 2011. Consequently, if a Florida Registered Paralegal who was registered under grandfathering had their status revoked due to loss of a job, failure to pay the annual renewal or any other reason they would not be eligible for re-registration. The amendment would allow the individual to reapply using grandfathering.

Source: Florida Registered Paralegal Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by vote of 4-0 on June 23, 2011;
- Rules Committee favorably reported substantive and procedural review by a voice vote of 4-0 on July 28, 2011;
- Budget Committee favorably reported fiscal review by ballot vote of 7-0 on September 30, 2011;
- Program Evaluation Committee favorably reported strategic plan review on October 20, 2011;
- On first reading at October 21, 2011 board meeting.

Board Action: Board of Governors favorably reported by voice vote on December 9, 2011.

Rule 20-3.1 Requirements for Registration

Explanation: This is the second of two revisions to this rule. Deletes subdivision (c), Grandfathering because the provision sunset on March 1, 2011.

Reasons: The grandfathering provision sunset on March 1, 2011. The amendment strikes the grandfathering language as obsolete.

Source: Florida Registered Paralegal Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by e-mail vote of 6 - 0 on October 4, 2010;
- Rules Committee favorably reported by voice vote of 3-0 and ballot vote of 3-0 on November 4, 2010; deferred until Florida Registered Paralegal Committee reviewed proposed changes to rule 20-4.1;

- Florida Registered Paralegal Committee voted to proceed with this amendment on January 20, 2011;
- Budget Committee favorably reported by voice vote of 9-0 on February 28, 2011;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on March 24, 2011;
- On March 25, 2011 board meeting agenda for first reading.

Board Action: Board of Governors favorably reported on consent on May 27, 2011.

SUBCHAPTER 20-4 REGISTRATION

Rule 20-4.1 Generally

Explanation: Within subdivision (a), codifies application requirement of supplying an attestation from the current employer; Deletes subdivision (a)(3) relating to grandfathering provision that sunset on March 1, 2011; Within subdivision (e) adds introductory language, adds new subdivision (f) allowing Florida Registered Paralegals employed by the government to pay their annual renewal in installments; adds new subdivision (g) exempting Florida Registered Paralegals who are activated reserve members of the military from the payment of annual renewal.

Reasons: Subdivision (a)(2) --- In order to be registered as a Florida Registered Paralegal the paralegal must be currently primarily performing paralegal work. A paralegal who is certified by NALA or NFPA is eligible for registration. The application requires that the paralegal provide an attestation showing they are currently employed. The amendment codifies that requirement.

Subdivision (a)(3) -- The proposed amendments delete subdivision (c) in its entirety as it or the subdivision involves attestation of the employing or supervising lawyer regarding grandfathering provisions in rule 20-3.1(c) that have sunset.

Subdivision (e) -- The first sentence is introductory language noting that there are exceptions to the payment of annual renewal fee and changes annual registration to annual renewal as that is the more accurate term.

Subdivision (f) -- Rule 20-4.1(e) states that the Florida Registered Paralegal annual renewal will be consistent with that applicable to members of The Florida Bar. Members of The Florida Bar working employed by the government as an attorney may pay their annual renewal in installments. Due to difficult economic times, Florida Registered Paralegals should be afforded the same opportunity. The amendment would allow certain Florida Registered Paralegals to pay their annual renewal in installments.

Subdivision (g) -- Rule 20-4.1(e) states that the Florida Registered Paralegal annual renewal will be consistent with that applicable to members of The Florida

Bar. Members of The Florida Bar who are in the military reserve are exempt from paying their annual renewal during the time they are activated. The amendment affords the same opportunity to Florida Registered Paralegals.

Source: Florida Registered Paralegal Committee

Background Information – Member Commentary / Committee Action:

- Amendments to subdivision (e) regarding deferral of renewal were approved by Florida Registered Paralegal Committee in concept on September 10, 2009. Amendments to the language were approved by e-mail vote of 5 - 0 December 21, 2009;
- Rules Committee favorably reported substantive and procedural review of the amendments regarding deferral of renewal in subdivision (e) by ballot vote of 7-0 on February 25, 2010;
- Program Evaluation Committee favorably reported strategic plan review of the amendments regarding deferral of renewal in subdivision (e) by voice vote of 8-0 on March 25, 2010;
- On March 26 board meeting agenda for first reading;
- Budget referred back to Florida Registered Paralegal Committee for further development on May 27, 2010.;
- Withdrawn by Florida Registered Paralegal Committee on June 25, 2010 by vote of 6 – 0;
- Florida Registered Paralegal Committee, on September 23, 2010 by a vote of 6-0, voted to rescind the withdrawal of amendments in subdivision (e) and resubmit the proposed rule amendment with the additional language;
- New subdivisions (f) and (g) were approved by Florida Registered Paralegal Committee by vote of 5 - 0 on September 23, 2010;
- Subdivision (a) amendments were approved by Florida Registered Paralegal Committee by e-mail vote of 6-0 on October 4, 2010;
- All amendments were re-submitted to Rules Committee for review on October 20, 2010. Rules Committee favorably reported substantive and procedural review of proposed amendments to subdivision (a) by voice vote of 3-0 and ballot vote of 3-0 on November 4, 2010. Rules Committee favorably reported substantive and procedural review of proposed amendments to the introductory language of subdivision (e) by voice vote of 4-0 and ballot vote of 2-0 on November 4, 2010. Rules Committee favorably reported substantive and procedural review of proposed amendments to new subdivision (f) by voice vote of 4-0 and ballot vote of 2-0 on November 4, 2010. Rules Committee favorably reported substantive and procedural review of proposed

amendments to new subdivision (g) by voice vote of 4-0 and ballot vote of 2-0 on November 4, 2010. Rules Committee rescinded their previous vote of proposed amendments to the last sentence of subdivision (e) by voice vote of 3-0 . A ballot vote of 3-0 approved the amendments as written. Rules Committee members expressed concerns in this economy eliminating the option to be a Florida Registered Paralegal for those who are grandfathered in, but lose their jobs, which was the effect of the amendment. The Rules Committee did not approve those changes to subdivision (e) and instead deferred action and asked Lori Holcomb to draft a proposal that permits an Florida Registered Paralegal who is grandfathered in to reapply at any point after losing Florida Registered Paralegal status. Lori Holcomb has asked to go back to the Florida Registered Paralegal Committee to allow them to discuss and re-draft alternatives that might address the Florida Registered Paralegal committee's concerns about CLE for those Florida Registered Paralegals.

- On January 20, 2011, Florida Registered Paralegal Committee voted to readdress the issue at its April meeting and proceed with the amendments that were approved by the Rules Committee on November 4, 2010;
- Program Evaluation Committee favorably reported strategic plan review by voice vote of 9-0 on March 24, 2011;
- Budget Committee favorably reported fiscal review by voice vote of 9-0 on March 24, 2011.

Board Action: Board of Governors favorably reported by voice vote on May 27, 2011.

SUBCHAPTER 20-6 CONTINUING EDUCATION

Rule 20-6.1 Generally

Explanation: Amendments require a Florida Registered Paralegal who has been revoked for failure to meet the continuing education (CE) requirement to complete a certain number of continuing education courses before re-registration. The number of hours required is contingent upon the number of years the Florida Registered Paralegal was registered and the number of hours completed prior to revocation.

Reasons: Similar to attorneys, every Florida Registered Paralegal has to complete 30 hours of continuing education (CE) every 3 years, 5 hours of which must be in legal ethics or professionalism. Some Florida Registered Paralegals are not completing their CE requirement and are reapplying. When Florida Registered Paralegals do not complete their CE requirements, the Florida Registered Paralegal

registrations are revoked. Florida Registered Paralegals can re-apply and start a new reporting cycle. As the rule exists now, Florida Registered Paralegals do not have to complete the 30 hours of CEs and every 3 years they can simply re-apply and start a new reporting cycle without ever having completed one hour of continuing education. It is of primary importance to both the public and to supervising lawyers to have the Florida Registered Paralegals continue their education while they are registered.

Source: Florida Registered Paralegal Committee

Background Information – Member Commentary / Committee Action:

- Florida Registered Paralegal Committee favorably reported by vote of 5-0 on September 22, 2011;
- Rules Committee favorably reported substantive and procedural review by vote of 3-0 on November 9, 2011;
- Budget Committee favorably reported fiscal review by email vote on November 23, 2011;
- Program Evaluation Committee favorably reported strategic plan review on December 8, 2011;
- On December 9, 2011 board meeting agenda for first reading.

Board Action: Board of Governors approved on consent at January 27, 2012 meeting.

III. Official Notice of Amendments

6. Pursuant to R. Regulating Fla. Bar 1-12.1(g), formal notice of intent to file all the proposals in this petition was published in the September 1, 2012 issue of the bar *News*. A photocopy of that published notice, printed from the Internet version of that *News* issue is included with this petition, in Appendix C. This notice can also be found at

<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/5E506B39144925B085257A6200707996>

IV. Discrepancy with West's Online 2012

7. During the preparation of this petition, the bar noted discrepancies between the Rules Regulating The Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published online in West's Florida Rules of Court 2012. The bar contacted West's, which has indicated that the errors will be corrected.

V. Editorial Corrections and Request for Waiver of Rules Procedures

8. During the preparation of this petition, the bar detected minor editorial errors within proposals as officially noticed. These editorial errors were not reviewed by the Board of Governors, but were made under the authority granted to bar staff to correct errors in this Court's administrative order AOSC06-14, dated June 14, 2006. Most of these editorial errors were corrected in the official bar *News* notice.

10. The bar submits that these deviations from the requirements of R. Regulating Fla. Bar 1-12.1 are minimal and the amendments themselves are non-controversial. The bar therefore requests that these additional revised proposals be accepted by this Court, and that this Court waive approval by the Board of Governors as to all the edits and Board of Governors approval and official notice in the print version of the bar *News* for all necessary rules, pursuant to R. Regulating Fla. Bar 1-12.1(i).

11. All other requested amendments in this petition were promulgated in full compliance with applicable rules and policies.

VI. Other Pending Amendments

12. As noted in section I, four other filings seeking separate amendments to the Rules Regulating The Florida Bar are pending before this Court:

(a) SC08-1181 and SC10-1014 Amendments to the Rules Regulating The Florida Bar, Rule 4-7.6, Computer-Accessed Communications. This Court issue an order staying both these cases on February 28, 2011, pending case number SC11-1327 below.

(b) SC10-437 Rules Regulating The Florida Bar, Rule 4-7.1 and 4-7.2, Use of Title "Judge" by Former or Retired Judges . This Court, on its own motion, directed that an official notice be published in the bar *News* of this Court's intent to adopt amendments to rule 4-7.1 and 4-7.2, R. Regulating Fla. Bar, addressing the use of the title "judge" by former or retired judges. A copy of the official notice was published in the April 15, 2010 issue of the bar *News*. This matter was stayed at the Court's own motion on February 28, 2011, pending filing of case number SC11-1327 below.

(c) SC11-1327 Subchapter 4-7, Lawyer Advertising Rules. This petition was filed on July 5, 2011, and oral argument was held on September 7, 2012.

13. The proposed amendments within this filing are unrelated to these four different rules matters and may be considered independent of them.

VII. Contents of Appendices

14. The complete text of all proposals is included in Appendix A to this petition, in legislative format (i.e., deleted language struck through, shown first, followed by new language underlined).

15. A separate two-column presentation follows in Appendix B, which includes extracted text of affected rules with proposed amendments in legislative format and an abbreviated recitation of the reasons for the changes.

16. The notice of intent to file this petition is provided in Appendix C.

17. Various communications of note that were received during the rules development process, and which are specifically referenced in this petition where relevant to specific amendments, are provided in Appendix D.

VIII. Comments in Response to Amendments

18. There were no comments received by the bar during the office rules development process or since the official notice of intent to file this petition.

19. If additional comments are filed in response to this filing, the 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).

IX. Oral Argument Not Requested

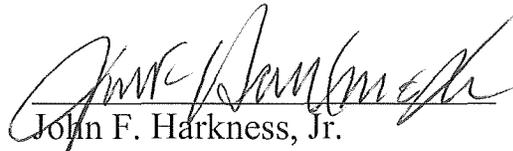
20. The bar does not seek oral argument regarding these amendments, unless this Court orders oral argument or bar members file comments that require additional response or appearance by the bar.

X. Effective Date Request

21. As to all amendments sought in this filing, the bar requests that any changes be made effective no sooner than 60 days from the date of this Court's order so that the bar can educate its members regarding any amendments.

The bar requests that this Court enter an order amending the Rules Regulating The Florida Bar as requested in this petition.

Respectfully submitted,



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Executive Director
Florida Bar Number 123390

Gwynne A. Young
President 2012-13
Florida Bar Number 185582

Scott Hawkins
President 2011-12
Florida Bar Number 460117

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CERTIFICATE OF TYPE SIZE AND STYLE

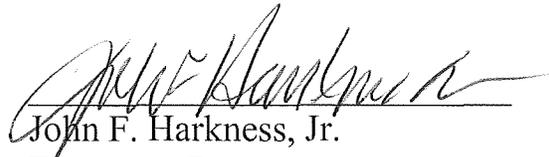
I certify that this petition is typed in 14 point Times New Roman Regular type.



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CERTIFICATE OF READ-AGAINST

I certify that the Rules Regulating The Florida Bar set forth within this petition have been read against the most recent copy of *West's Florida Rules of Court 2012* by Rebecca S. Burke, Rules Administrative Coordinator.



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