

**IN THE SUPREME COURT OF FLORIDA**

THE FLORIDA BAR  
PETITION TO AMEND RULES  
REGULATING THE FLORIDA BAR-  
BIENNIAL FILING 2014

CASE NO. SC14-

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

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:

**Authority to File Petition**

This petition has been authorized by the Board of Governors of The Florida Bar (Board of Governors).

**Organization of Petitions**

The bar's biennial submission has been divided into 4 parts, with all 4 petitions filed simultaneously. The first petition, entitled Petition to Amend Rules Regulating The Florida Bar - Biennial Filing 2014, encompasses those rules that the bar believes may require more consideration and reflection by this Court. The second petition, entitled Petition To Amend The Rules Regulating The Florida Bar - Biennial Filing 2014 Housekeeping, comprises those rules that the bar believes may require less contemplation by this Court and for which this Court may be inclined to expedite review. Many amendments in the housekeeping petition involved editorial changes, housekeeping amendments to update the rules based on the passage of prior amendments, changes to codify long-standing practice, changes to court rules, and other amendments likely to require less of this Court's attention than the proposals in the first petition. The third petition, entitled Petition to Amend Rule Regulating The Florida Bar 4-1.5 Fees and Costs for Legal

Services, includes amendments solely to rule 4-1.5, addresses issues that may require more consideration and reflection by this Court, and for which the Bar seeks oral argument. The fourth petition, entitled Petition to Amend Rule Regulating The Florida Bar 4-7.22 Lawyer Referral Services, includes amendments solely to rule 4-7.22, addresses issues that may require more consideration and reflection by this Court, was the subject of a study by a special committee, and for which the Bar seeks oral argument.

This petition includes proposed new rules or amendments to existing rules that were approved by the Board of Governors between July 2012 and July 2014.

This petition is the biennial filing with amendments to multiple rules that may require more of this Court's time and reflection.

## **Organization of Amendments**

The bar proposes new rules or amendments to existing rules as indicated in the listing that follows. This section 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. Non-substantive edits to conform rules to this Court's style guide are not noted separately.

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.

## **Amendments**

### **CHAPTER 1 GENERAL**

#### **SUBCHAPTER 1-3 MEMBERSHIP**

##### **Rule 1-3.3 Official Bar Name and Contact Information**

*Explanation:* Within subdivision (a), requires that bar members provide an e-mail address to the bar unless the bar grants an exception.

Reasons: Florida Rules of Judicial Administration permit lawyers to serve other lawyers at their record bar e-mail addresses. The proposed amendment would make it easier for Florida Bar members to determine each others' e-mail addresses for e-mail service, because they would be made available on the bar's website. The proposed amendment makes the bar rule more similar to Florida Rules of Judicial Administration 2.516(b)(1)(B), which provides an exception and states:

Exception to E-mail Service on Attorneys. Upon motion by an attorney demonstrating that the attorney has no e-mail account and lacks access to the Internet at the attorney's office, the court may excuse the attorney from the requirements of e-mail service.

*Source:* Board of Governors member Andrew B. Sasso

*Background Information - Member Commentary/ Committee Action:*

- Rules Committee approved on substantive and procedural basis by voice and e-mail vote 6-0 on January 10, 2014
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.

*Board Action:* Board of Governors approved by voice vote on March 28, 2014.

### **Rule 1-3.7 Reinstatement to Membership**

*Explanation:* Within subdivision (d), proposed amendments clarify that reinstatement requires approval by the Supreme Court of Florida.

*Reasons:* Proposed amendments codify existing requirements that the Supreme Court of Florida must approve reinstatement to membership of members who have been retired or delinquent for more than 5 years.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Rules Committee approved on substantive and procedural basis with additional non-substantive edits to subdivision (b) by voice and e-mail vote of 6-0 on January 10, 2014.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014

*Board Action:* Board of Governors approved on voice vote on March 28, 2014.

### **Rule 1-3.7 Reinstatement to Membership**

*Explanation:* Within subdivision (f), adds Continuing Legal Education Requirement and Basic Skill Course Requirement delinquency so that a lawyer will not be disciplined for practicing law while delinquent if reinstatement occurs within 60 days of the delinquency; changes "accomplished" to "approved"; and changes "shall be deemed to relate back to the date" to "is effective on the last business day."

*Reasons:* The proposed amendment expands the effect of reinstatement within 60 days of delinquency to include Continuing Legal Education Requirement and Basic Skill Course Requirement delinquencies. The Board of Legal Specialization and Education requests that Continuing Legal Education Requirement and Basic Skill Course Requirement delinquencies be treated the same as membership fees delinquency, so that reinstatement for Continuing Legal Education Requirement or basic skills course requirement delinquency relates back to the date before the delinquency if reinstatement is accomplished within 60 days. Delinquency for noncompliance with the Continuing Legal Education Requirement and Basic Skill Course Requirement has been characterized as an administrative delinquency unlike a sanction that is discipline related. Members should be permitted a 60-day window in which to secure reinstatement without the imposition of a potential sanction for the practice of law during that time period.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- The Board of Legal Specialization and Education voted unanimously to approve Continuing Legal Education Requirement and BSCR delinquency additions at its meeting on March 21, 2014.
- Rules Committee approved on substantive and procedural basis by voice vote of 4-0 on April 22, 2014.
- Program Evaluation Committee approved on a strategic basis by vote of 10-0 on May 22, 2014.
- Budget Committee approved by e-mail vote of 7-0 on June 18, 2014.

*Board Action:* Board of Governors approved on consent by voice vote on July 25, 2014.

CHAPTER 3 RULES OF DISCIPLINE  
SUBCHAPTER 3-5 TYPES OF DISCIPLINE

**Rule 3-5.1 Generally**

*Explanation:* Within subdivision (e), clarifies that a suspension may be for a specified time as imposed by this Court's order or until further order of this Court as in the case of contempt orders.

*Reasons:* At the request this Court, the Disciplinary Procedures Committee looked at the provision in Rule 3-5.1 referring to indefinite suspensions, to determine whether this portion of the rule was still needed or whether other rule revisions in the past few years had eliminated the need for this subdivision of the rule. Amendments to Subsection 3-5.1(e) are necessary to explain the elements of suspension and to reflect the fact that all disciplinary suspensions, except for those due to contempt orders which are in effect until further order of the court, are for a finite period of time. Emergency suspensions and felony suspensions are also in effect until further order the Supreme Court of Florida.

*Source:* Bar staff in response to letter from Florida Supreme Court

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved by vote of 5-0 on January 31, 2013.
- Rules Committee approved by vote of 6-0 on May 2, 2013.
- Budget Committee approved by vote of 7-0 on May 20, 2013.
- Program Evaluation Committee approved by vote of 11-0 on May 30, 2013.

*Board Action:* Board of Governors approved on consent calendar on July 26, 2013.

**Rule 3-5.1 Generally**

*Explanation:* Within subdivision (h), adds a provision that a disbarred or suspended lawyer must notify all state, federal, or administrative bar associations of which the lawyer is a member that the lawyer has been suspended or disbarred. Also within subdivision (h), adds that in the affidavit furnished to the bar the lawyer must include the telephone numbers of all persons and entities who have been notified of the lawyer's disbarment or suspension. Within subdivision (j) adds that a member who fails to comply with a restitution agreement or order is delinquent; and that the respondent must provide to the bar the names, addresses, telephone numbers and e-mail addresses (where available) of all individuals or entities to whom the respondent owes restitution.

*Reasons:* The proposed amendments to subdivisions (h) and (j) would make it easier to check for compliance with the notification requirement of 3-5.1(g) and

to report suspensions or disbarments to other jurisdictions. Amendments would also enable the bar to track restitution compliance more easily. Lack of this information in the past has created roadblocks to enforcement and these changes will assist greatly in the flow of information, ease of enforcement and better service to the public and clients of suspended or disbarred lawyers.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedures Committee approved amendments to subpart 3-5.1(h) unanimously by vote of 6-0 on March 24, 2011.
- The Disciplinary Procedures Committee approved amendment to 3-5.1(j) on January 31, 2014.
- Rules Committee voted 5-1 on January 10, 2014 to refer the issue back to Disciplinary Procedure Committee for consideration of keeping the paragraph on suspensions of more than 90 days in (e).
- The Disciplinary Procedure Committee voted 5-0 on January 30, 2014 to keep the paragraph on suspensions of more than 90 days in subpart (e).
- Rules Committee approved on procedural basis by voice vote of 4-0 with referral to Disciplinary Procedure Committee to add e-mail addresses to rule in subdivisions (h) and (j) on April 22, 2014
- Budget Committee approved by 7-0 by e-mail vote on May 1, 2014.
- Program Evaluation Committee approved on a strategic basis by vote of 10-0 on May 22, 2014.

*Board Action:* Board of Governors approved on consent by voice vote on July 25, 2014.

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

*Explanation:* Amends subpart (h) of Rule 3-5.1 to state that all respondents who are suspended, even if they have already served all or part of their suspension when a court order is issued regarding the suspension, must furnish a copy of the court order or notice of commencement of the suspension to all of respondent's clients with pending matters, all courts, tribunals and adjudicative agencies in which respondent is counsel of record, and all opposing counsel and co-counsel in any of these matters.

*Reasons:* Complies with this Court's request, via letter from the Clerk of Court, dated April 29, 2014, that the bar amend its rules to ensure that respondents cannot avoid the notice requirements of subpart 3-5.1(h) by completing a

suspension before the Court's final order is issued regarding their suspension. The letter can be found in Appendix D of this petition.

*Source:* Supreme Court of Florida referral

*Background Information - Member Commentary/ Committee Action:*

- Rule was last amended in 2012.
- This matter was assigned to the Disciplinary Procedure Committee on 04/29/2014.
- The Disciplinary Procedure Committee approved 6-0 on May 22, 2014.
- Approved 7-0 by Budget Committee by an e-mail vote on June 18, 2014.
- Approved 7-0 with non-substantive edits by Rules Committee by e-mail vote on June 20, 2014.
- Strategic approval by Program Evaluation Committee voice vote of 13-0 on July 24, 2014.

*Board Action:* Board of Governors waived second reading and approved unanimously on July 25, 2014.

### **Rule 3-5.2 Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity not Related to Misconduct**

*Explanation:* Within subdivision (c) and new subdivisions (d) and (e), and renumbered subdivisions (h) and (k), proposed rule amendments provide a mechanism for owners of funds in a lawyer's frozen trust account, to assert claims of ownership on these funds as part of the Bar's referee procedures in suspension and emergency suspension cases through a referee or receiver. Remaining rule provisions are renumbered.

*Reasons:* This Court has noted the need for a procedure designed to timely return funds belonging to clients and third parties of lawyers whose trust accounts have been frozen. Trust accounts are usually frozen by court order as part of a lawyer's suspension or disbarment. Currently the owners of the funds have to hire attorneys to institute county or circuit court proceedings for the return of these funds.

*Source:* Supreme Court of Florida referral

*Background Information - Member Commentary/ Committee Action:*

- At a November 13, 2012 conference call meeting the committee agreed unanimously by vote of 4-0 to further revisions to the rule and directed Bar staff to revise the petition to be filed by persons asserting ownership of funds in a lawyer's frozen trust account and to revise the notice to potential owners.

- The Disciplinary Procedure Committee further voted unanimously not to make the petition and notice part of the rule.
- Disciplinary Procedure Committee voted 3-0 to approve the final revised rule, petition and notice on December 6, 2012.
- Program Evaluation Committee approved by vote of 9-0 on January 31, 2013.
- Budget committee approved by an e-mail vote of 7-0 on April 2, 2013.
- Rules Committee approved by vote of 6-0 on May 2, 2013.

*Board Action:* Board of Governors approved by voice vote without objection on May 31, 2013.

### **Rule 3-5.3 Diversion of Disciplinary Cases to Practice and Professionalism Enhancement Programs**

*Explanation:* Within subdivision (c) and the comment, the proposed change allows bar members who have received a diversion in the past to be eligible for a diversion for a different type of conduct, for which a diversion program exists, as long as the subsequent conduct occurred one year or more after the first diversion. Within subdivision (c) the proposed amendment also shortens the period between diversions for the same type of conduct from 7 years to 5 years.

*Reasons:* As part of its recommendations to the bar on discipline matters, the Hawkins Commission recommended allowing bar members to be eligible for diversion after the expiration of shorter periods of time. The Hawkins Commission also recommended changing the diversion rule to allow even shorter periods between diversions for different types of conduct. The Hawkins Commission concluded that such proposed changes would permit more education and rehabilitation programs for bar members where such programs would be more efficacious than actual discipline. The Hawkins Commission report can be found in Appendix D of this petition.

*Source:* Bar Staff, following Hawkins Commission recommendation

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved to amend Rule 3-5.3(c) to reduce the period between diversions for all lawyers and for all conduct subject to diversion from 7 years to 5 years by vote of 6-0 on July 26, 2012.
- Disciplinary Procedure Committee voted to reduce the amount of time between completely different areas of diversion, such as advertising and trust accounting, to one year by vote of 3-0 on December 6, 2012.

- Program Evaluation Committee approved by vote of 9-0 on January 31, 2013.
- Budget Committee approved by an e-mail vote of 7-0 on April 2, 2013.
- Rules Committee approved by vote of 6-0 on May 2, 2013.

*Board Action:* Board of Governors approved by voice vote without objection on May 31, 2013.

## SUBCHAPTER 3-7 PROCEDURES

### **Rule 3-7.10 Reinstatement and Readmission Procedures**

*Explanation:* Within subdivision (b)(1) amendments require that filing and notice conform to appropriate court rules, deleting the requirement of a copy. Within subdivision (f)(4)(B) amendments require that all petitions for reinstatement which involve a respondent who is required to re-take the bar exam, include proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portion of the Florida Bar examination and the Multistate Professional Responsibility Exam section.

*Reasons:* Amendments regarding filing and notice conform those requirements to court rules. There has been an increase in recent years in suspended and disbarred lawyers filing petitions for reinstatement before they actually have proof that they have passed the required Florida law portions of the Florida Bar exam and the Multistate Professional Responsibility Exam. Proof of passing these examinations is required before the respondent can be reinstated. To avoid wasting the referees' time as well as lawyers' time, the proposed rule amendment would require the petitioners to include in their initial petition for reinstatement proof that they have already passed the required 2 portions of the Florida Bar exam. This will avoid costly stays of referee proceedings.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved 5-0 amendments to subdivision (f)(4)(B).
- Rules Committee approved changing subdivision (b)(1) to indicate that filing and notice must comply with appropriate court rules by vote of 5-0 on September 6, 2013.
- Program Evaluation Committee approved by vote of 10-0 on October 3, 2013.
- Budget Committee approved by a vote of 7-0 by on October 25, 2013.

- *Board Action:* Board of Governors approved on voice vote December 13, 2013.

**Rule 3-7.10 Reinstatement and Readmission Procedures**

*Explanation:* Amends subpart (b)(1) of Rule 3-7.10 to specify that a respondent may not file a petition for reinstatement until that respondent has completed 80% of the respondent's total period of suspension.

*Reasons:* At a meeting between Staff Counsel and the Clerk of the Supreme Court of Florida, the Clerk asked the bar to propose to the Disciplinary Procedures Committee the possibility of allowing suspended respondents to file petitions for reinstatement only when they are near the end of their suspensions, e.g., when 80% of the suspension period has been completed. This Court had seen respondents filing earlier and earlier petitions for reinstatement and wanted to establish a time for filing for all petitioners.

*Source:* Clerk, Supreme Court of Florida via bar staff

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved by voice vote of 6-0 on November 19, 2013.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on March 27, 2014.
- Rules Committee approved on procedural basis by voice vote of 4-0 on April 22, 2014.
- Budget Committee approved e-mail vote of 7-0 on May 1, 2014.

*Board Action:* Board of Governors approved on voice vote on May 23, 2014.

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

**Rule 4-1.6 Confidentiality of Information**

*Explanation:* Adds new subdivision (c)(6) and commentary which would permit lawyers to disclose confidential information to discover and resolve conflicts of interest when law firm composition changes or a lawyer changes employment with a firm where attorney-client privilege will not be compromised and disclosure will not harm the client. Adds new subdivision (e) requiring lawyers to make reasonable efforts to avoid inadvertent disclosure of confidential information and re-letters subsequent subdivisions accordingly. Amendments add new commentary explaining a lawyer's obligations to avoid inadvertent disclosure of confidential information.

*Reasons:* The American Bar Association (ABA) adopted amendments to its model rules in response to recommendations from the ABA Ethics Commission 20/20 relating to resolution of conflicts of interest when lawyers change law firms or purchase a law firm in new subdivision (c)(6). The proposed amendments conform Florida's rule 4-1.6 more closely to the ABA model rule and provide for greater mobility of lawyers by allowing lawyers to disclose limited confidential information when changing firms to determine whether conflicts of interest exist. The disclosure is limited to circumstances where clients will not be adversely impacted to protect clients' interests. New subdivision (e) conforms to the ABA Model Rule, addresses changes in technology, and requires lawyers to make reasonable efforts to protect confidential information from inadvertent disclosure and unauthorized access. Changes to the commentary provide further explanation and guidance regarding both new subdivisions.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Rules Committee approved on substantive and procedural basis by voice and e-mail vote of 6-0 on January 10, 2014.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.

*Board Action:* Board of Governors approved by voice vote on March 28, 2014.

#### **Rule 4-1.17 Sale of Law Practice**

*Explanation:* Proposed amendments to the comment reference proposed amendments to rule 4-1.6 which would permit disclosure of some confidential information to resolve conflicts of interest before the purchase of a law practice.

*Reasons:* The ABA adopted amendments to its model rules in response to recommendations from the ABA Ethics Commission 20/20 relating resolution of conflicts of interest when lawyers change law firms or purchase a law firm. The changes allow greater mobility for lawyers while protecting clients' interest by limiting the disclosure that is permitted and prohibiting disclosure where disclosure would adversely impact the clients.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Rules Committee directed staff to draft amendments to bar rules conforming to ABA Model Rules Ethics Commission 20/20 amendments at its November 18, 2013 meeting.

- Approved by Rules Committee 6-0 on substantive and procedural basis by voice and e-mail vote on January 10, 2014.
- Approved by Program Evaluation Committee on strategic basis by vote of 11-0 on January 30, 2014.
- Approved by Budget Committee by vote of 6-0 on February 21, 2014.

*Board Action:* Approved by Board of Governors by voice vote on March 28, 2014.

## SUBCHAPTER 4-5 LAW FIRMS AND ASSOCIATIONS

### **Rule 4-5.3 Responsibilities Regarding Nonlawyer Assistants**

*Explanation:* Changes in the rule and commentary clarify that a lawyer's obligations regarding nonlawyers applies whether the nonlawyers work directly for lawyers inside a law firm or work outside the firm. Proposed commentary provides examples of work "outsourced" to nonlawyers, factors to consider in determining the extent of reasonable measures of the lawyer, the lawyer's obligation to communicate with the nonlawyers outside the firm, and allocation of decision-making between lawyer and client regarding use of nonlawyers outside the firm.

*Reasons:* The ABA adopted amendments to its model rules in response to recommendations from the ABA Ethics Commission 20/20 relating to outsourcing. These amendments closely follow the amended ABA model rule and provide greater protection to clients by providing guidance to lawyers that lawyers remain responsible for the work of nonlawyers regardless of whether the nonlawyers work inside or outside the law firm.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Approved by Rules Committee 6-0 on substantive and procedural basis by voice and e-mail vote on January 10, 2014.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.

*Board Action:* Approved by Board of Governors by voice vote on March 28, 2014.

## CHAPTER 5 RULES REGULATING TRUST ACCOUNTS

### SUBCHAPTER 5-1 GENERALLY

#### **Rule 5-1.1 Trust Accounts (Replacing Funds Improperly Taken from a Lawyer's Trust Account)**

*Explanation:* Reorganizes subdivision (a) and within subdivision (a)(1) creates an exception to commingling to permit a lawyer to deposit sufficient funds into the lawyer's trust account to make up a shortfall in the trust account caused by misappropriation, bank error, bank charge or a bounced check.

*Reasons:* The bar proposes the amendment to encourage lawyers to replenish shortages in their trust accounts whether through the lawyer's error, the error of a bank or employee, disbursement against uncollected funds that never become collected, or misappropriation. In the case of *The Florida Bar v. Rousso* and *The Florida Bar v. Roth*, 117 So.3d 756 (Fla. March 28, 2013), 2 lawyers were disbarred for improper supervision, conflicts of interest, and multiple trust account violations after a nonlawyer employee stole over \$4 million from trust. The respondent lawyers borrowed money from a client without explaining to the client that the money would be used to cover thefts and put the money in the trust account to cover the theft. The respondent lawyers did not have sufficient funds to cover the full loss and "kited" by continuing to accept funds from new clients which, combined with the lawyers' payments of their own money, kept the trust account afloat. The respondent lawyers were found to have commingled by putting their own money in their trust account to make up a short fall from a theft by a nonlawyer employee.

The bar proposes these amendments to permit a lawyer to deposit sufficient funds in trust to make up a shortfall caused by misappropriation or error so that lawyers will be encouraged to take the appropriate action to provide restitution to affected clients. The notification requirement will allow the bar to take appropriate action where violations of the Rules Regulating The Florida Bar have occurred. The notification requirement will also ensure that lawyers notify clients that their funds were affected by either error or intentional misappropriation, so that clients can take steps to protect themselves and their funds. The notification requirements would also prevent the situation that occurred in the *Rousso* and *Roth* case, since lawyers would not be able to "float" funds through the trust account to cover shortages without any clients or the bar being aware that the shortage had occurred.

Of the 19 states that responded to the bar's request for information on the National Organization of Bar Counsel LISTERV, 15 indicated that a deposit of the lawyer's own funds to cover a shortfall would not be considered commingling in their state, because the funds would be considered client property on the lawyer's depositing it to make restitution. Iowa further refines that concept by excluding shortages created by the lawyer's own theft or misconduct, which would be considered commingling. Of the 2 states that responded that such a deposit would be considered commingling, one (Arizona) responded that a lawyer would not be subject to discipline if that instance of commingling was the only trust account

violation, notwithstanding the technical violation of commingling. 1 state reported unknown.

There may be instances in which the best result is to close the trust account and directly reimburse the clients. However, there are also instances where the best interests of the client may be to replenish the trust account. For example, a client may have funds for the purchase of real estate or advances on costs and fees held in trust that will be unavailable to the client for their intended purpose for an extended period of time if the lawyer is unable to directly replace funds in trust, as the funds would have to be paid directly to the client and the client would then have to give the lawyer additional funds to deposit into trust if the client wants to continue representation.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved initial amendments to Rule 5-1.1 and requested that staff draft additional provisions to differentiate between misappropriations and inadvertent shortfalls due to unexpected bank charges by vote of 5-0 on May 30, 2013.
- Disciplinary Procedure Committee approved further revisions and requested that staff make final revisions to subpart 5-1.1(a)(1)(B)(ii) per the Disciplinary Procedures Committee's direction to require notification to the bar of any trust account shortages by vote of 5-0 on July 25, 2013.
- Disciplinary Procedures Committee unanimously approved final substantive and stylistic changes on voice vote of 6-0 on November 19, 2013.
- Rules Committee approved by voice and e-mail vote of 6-0 on January 10, 2014.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.

*Board Action:* Board of Governors approved by voice vote with objection on March 28, 2014.

## **Rule 5-1.2 Trust Accounting Records and Procedures**

*Explanation:* The proposed amendments to Rule 5-1.2 address maintenance of trust accounting records when a law firm is either dissolved or sold to an attorney or group of attorneys.

*Reasons:* The proposed changes will make clear who is responsible for trust account records when a law firm is either dissolved or sold to another lawyer or

group of lawyers. These aspects of trust account record keeping had not previously been specifically addressed in the Rules Regulating The Florida Bar.

*Source:* Real Property Probate and Trust Law Section of The Florida Bar via the bar's President

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedure Committee approved a proposal to incorporate 2 subparts of the ABA Model rules relating to ownership of trust account records when a law firm is dissolved or sold by vote of 5-0 on April 18, 2013.
- Disciplinary Procedure Committee to approved the rule as amended by vote of 4-0 on May 30, 2013
- Budget Committee approved by vote 9-0 on July 25, 2013.
- Rules Committee approved by vote of 5-0 on the condition that "upon" is changed to "on" in subdivisions (e) (1) and (2) on September 6, 2013.
- Program Evaluation Committee approved 10-0 on October 3, 2013.

*Board Action:* Board of Governors approved on voice vote without objection on December 13, 2013.

### **Rule 5-1.2 Trust Accounting Records and Procedures**

*Explanation:* Strikes subpart (c)(5), which requires bar members to file a trust account compliance form with the bar each year.

*Reasons:* A number of inconsistent results have come from grievance committees based on differing readings of 5-1.2(c)(5). A significant minority of bar members have not been filing the trust account certificate, despite the rule requiring it. Some designated reviewers favored diversion for respondents with minor trust account violations who had filed their trust account certificates, certifying that their trust accounts were in compliance with bar rules when in fact they were not in compliance. Staff Counsel believed such certification constituted a misrepresentation by the respondents, preventing respondents from receiving diversion in these matters. Other respondents who had not filed their trust account certificates, however, were eligible for diversion because they had not misrepresented anything to the bar, but had violated the rule requiring filing the certificate. The Disciplinary Procedures Committee felt it would be better to educate bar members of the requirements of the trust account rules than to have a rule that engendered inconsistent results from designated reviewers and grievance committees and was not being interpreted as a sworn statement by some designated reviewers.

*Source:* Bar Staff

*Background Information - Member Commentary/ Committee Action:*

- Disciplinary Procedures Committee approved with lengthy discussion to delete subpart (c)(5) from Rule 5-1.2 and related subparts by vote of 6-0 on November 19, 2013.
- Rules Committee approved by voice and e-mail vote of 6-0 on January 10, 2014.
- Program Evaluation Committee approved on strategic basis by vote of 11-0 on January 30, 2014.
- Budget Committee approved by vote of 6-0 on February 21, 2014.

*Board Action:* Board of Governors approved by voice vote on March 28, 2014.

CHAPTER 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS  
SUBCHAPTER 6-12 BASIC SKILLS COURSE REQUIREMENT RULE

**Rule 6-12.3 Requirement**

*Explanation:* Eliminates the in-person requirement for Practicing with Professionalism, eventually allowing members to complete the course on-line to successfully satisfy the Basic Skills Course Requirement.

*Reasons:* Currently, high demand for Practicing with Professionalism has created a hardship for the members of the Young Lawyers Division to complete the course within their first year of admission. 21 live courses are currently offered every fiscal year. Most of these courses become full within the first or second week of the registration period. The Order Entry and Professional Development Departments field many calls from members attempting to register for courses that are no longer available. Many registrants attend courses in geographical areas inconvenient for them, simply because it is the only location available for them to attend. For example, there has been a drastic increase in the number of members from South Florida (Miami, Ft. Lauderdale, and Palm Beach) attending courses in Panama City and Tallahassee simply because it is the only course available for them to attend. Eliminating the in-person requirement and offering the course on-line will eliminate this hardship. Permitting members of the Young Lawyers Division to complete Practicing with Professionalism via electronic means (i.e., in an on-line, on-demand format) will be a tremendous member service, as it will:

- Allow the Young Lawyers Division to be at the forefront of technological advancements and create a Practicing with Professionalism program that is independently interactive and engaging;
- Expand the availability and convenience of Practicing with Professionalism to Young Lawyers Division members, especially

those members who do not live or work in the cities where the live programs are conducted;

- Provide the Young Lawyers Division a means to reduce programming costs (including facility rental, staff, and copy costs) which will free up Young Lawyers Division resources for other projects and programs;
- Reduce the expenses incurred by Young Lawyers Division members by eliminating the necessity to travel to attend a live course; and
- Allow all Young Lawyers Division members the opportunity to view the best speakers/panelists and highest quality of programming possible.

*Source:* Young Lawyers Division

*Background Information - Member Commentary/ Committee Action:*

- Young Lawyers Division voted 21-14 to approve the amendment on August 25, 2013.
- Program Evaluation Committee approved on strategic basis by vote of 13-0 on December 12, 2013.
- Program Evaluation Committee substantively approved in concept consideration of an online Practicing with Professionalism alternative, but deferred to request information on the process from Young Lawyers Division on December 12, 2013.
- Program Evaluation Committee re-stated at its January 30, 2014 meeting that the committee approved the concept of on-line Practicing with Professionalism but that implementation of an on-line program were the purview of other bar entities.
- Rules Committee approved on a procedural basis by voice vote of 4-0 on April 22, 2014.
- Budget Committee approved by e-mail vote of 7-0 on May 1, 2014.

*Board Action:* Board of Governors waived second reading by 2/3 vote and approved on May 23, 2014.

CHAPTER 10 RULES GOVERNING THE INVESTIGATION AND  
PROSECUTION OF THE UNLICENSED PRACTICE OF LAW  
SUBCHAPTER 10-7 PROCEEDINGS BEFORE A REFEREE  
**Rule 10-7.2 Proceedings for Indirect Criminal Contempt**

*Explanation:* Within subdivision (e), adds that the bar may file objections to referee's recommended sentence in contempt proceedings.

*Reasons:* Currently, the bar cannot file an objection to a referee's recommended sentence in contempt proceedings. The bar needs this ability if the bar believes the referee's report is incorrect.

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

*Background Information - Member Commentary/ Committee Action:*

- Standing Committee on UPL approved by a vote of 23 – 0 on September 26, 2013.
- Rules Committee approved on voice and e-mail vote of 4-1 on November 18, 2013.
- Program Evaluation Committee approved by vote of 13-0 on December 12, 2013.
- Budget Committee approved by vote of 7-0 on January 9, 2014.

*Board Action:* Board of Governors approved by voice vote on January 31, 2013.

### **Official Notice of Amendments**

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 August 15, 2014 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/13895FEBD04AE96D85257D260049FFB1>

### **Discrepancy with West's Online 2014**

During the preparation of this petition, the bar noted minor formatting discrepancies between the Rules Regulating The Florida Bar as maintained by the bar and the Rules Regulating The Florida Bar as published online in the most recent version of West's Florida Rules of Court and notified West's Publishing Company.

## **Editorial Corrections and Request for Waiver of Rules Procedures**

During the preparation of this petition, the bar detected minor formatting 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. These editorial errors were not corrected in the official bar *News* notice.

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).

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

### **Other Pending Amendments**

One petition to amend Rule Regulating The Florida Bar 1-7.3, filed by more than 50 members of the bar in good standing, is pending before this Court in case SC14-1165. The proposed amendments within this filing are unrelated to the pending petition in case SC14-1165 and may be considered independent of it. No proposed amendments to rule 1-7.3 are contained in this petition.

### **Contents of Appendices**

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).

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

Non-substantive edits to conform rules to this Court's style guide are not noted separately.

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

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.

### **Comments in Response to Amendments**

No comments were received by the bar in response to these amendments.

### **Oral Argument Not Requested**

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.

### **Effective Date Request**

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,

/s/ John F. Harkness, Jr.

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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.

/s/ John F. Harkness, Jr.

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

**CERTIFICATE OF READ-AGAINST**

I certify that the Rules Regulating The Florida Bar set forth within this petition have been read against the on-line version of *West's Florida Rules of Court*.

/s/ John F. Harkness, Jr.

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